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COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE, SS SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS

vs. Docket No:
2011-0140

DAVID T. CHALUE,

JURY TRIAL
BEFORE THE HONORABLE C. JEFFREY KINDER

APPEARANCES:

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Hampden Superior Court
50 State Street
Springfield, Massachusetts
April 25, 2014

ALICIA CAYODE KYLES
Official Court Stenographer
Registered Merit Reporter

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1 (* * * * *)

2 (The Court entered at 9:02 a.m.)

3 (The defendant was present.)

4 THE COURT: Thank you. Please be seated.

5 Good morning. Good morning, Counsel.

6 MR. CAPELESS: Good morning, Your Honor.

7 THE COURT: I have a couple of preliminary matters I
8 wanted to address before I hear any that you may wish to
9 raise.

10 Thank you for working at coming to some agreement on
11 the stipulations. I have reviewed it.

12 Mr. Capeless, does the stipulation change in any way
13 your estimate of the length of the trial?

14 MR. CAPELESS: No. I think, Your Honor, or maybe a
15 number of them we had actually employed during the Hall
16 trial, but some of them will cut down to some extent. We
17 are also looking to trim what we're doing and I'm saying --
18 I'm saying we should definitely be done probably three
19 weeks.

20 THE COURT: All right. So nothing that would require a
21 re-instruction of the jury on our estimate?

22 MR. CAPELESS: No, Your Honor.

23 THE COURT: All right. Mr. Frank, have I assumed that
24 you have had an opportunity to speak with Mr. Chalue about
25 the stipulation?

1 MR. FRANK: I have, Your Honor.

2 THE COURT: All right. Bear with me for just a moment.

3 Mr. Chalue, can I ask you to stand for just a moment.

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Chalue, we have been referring to this
6 three-page document which has -- is titled Stipulations.

7 THE DEFENDANT: Okay.

8 THE COURT: It bears Mr. Frank's signature and he
9 reports and I accept his statements that he has discussed it
10 with you. I just want to make certain, for the record, that
11 you've had a chance to discuss it with him, you've seen it,
12 and you agree with the stipulations; is that a fair
13 statement?

14 THE DEFENDANT: Yes.

15 MR. FRANK: He hasn't seen the actual documents. We
16 have discussed it, Your Honor. I don't believe he has
17 actually seen the actual document.

18 THE COURT: Why don't you take a moment while we are
19 discussing other matters and take a look at the
20 stipulations.

21 Can you do that?

22 THE DEFENDANT: Thank you.

23 May I sit?

24 THE COURT: You may.

25 THE DEFENDANT: Thank you.

1 (Pause)

2 THE COURT: I have a copy here.

3 MR. FRANK: Thank you, Your Honor.

4 THE COURT: Mr. Capeless, are you seeking a ruling on
5 your motion in limine to admit Mr. Chalue's statements as
6 part of your case in chief before opening?

7 MR. CAPELESS: No, Your Honor. I don't intend to get
8 into it in the opening.

9 THE COURT: All right. I also wanted to tell you that
10 it is my plan to -- and this has to do only with scheduling.

11 It is my plan to keep the jurors in the building and
12 provide lunch to them. I mention that only because I think
13 it's important that we be ready to go at two o'clock,
14 because they will have been waiting for the lunch hour and I
15 don't want to keep them waiting any longer than is
16 absolutely necessary. So, absent some alteration in the
17 schedule, I would ask you to be try to be prompt as will I
18 so that we can begin promptly at two o'clock.

19 Now, Mr. Capeless, any preliminary matters on behalf of
20 the Commonwealth?

21 MR. CAPELESS: None that I can think of.

22 THE COURT: Mr. Frank?

23 MR. FRANK: Not exactly a preliminary matter, Your
24 Honor. But I am going to be seeking additional records from
25 DOC based on the records that I currently have. I would

1 like to reserve time on perhaps Wednesday after we're done
2 with court and get the people from DOC in on that date.

3 I raise this now because I'm concerned I will forget
4 later. If I get the --

5 THE COURT: When you say get the people in from DOC,
6 I'm not exactly sure what you are asking me.

7 MR. FRANK: I intend to have, prepare over the weekend,
8 a Dwyer Lampron motion. I will be also be subpoenaing the
9 records while we are at trial. And I think that our
10 hearing -- may be required -- that will involve people from
11 the DOC.

12 THE COURT: You mean counsel from DOC?

13 MR. FRANK: Counsel from DOC.

14 THE COURT: All right. Well, I'm on notice of your
15 intention to file that. Have you been in touch with anyone
16 at the Department of Correction? Is there counsel regarding
17 whether these -- you might be able to facilitate this
18 without motion practice?

19 MR. FRANK: I know that I will need to do this through
20 motion because some of them are for the mental health
21 records and I have not, only because I just haven't had the
22 time, quite frankly.

23 THE COURT: I understand. All right.

24 So when you say after we are finished on Wednesday, you
25 mean at four o'clock Wednesday?

1 MR. FRANK: Yes.

2 THE COURT: All right. In light of the fact that we're
3 setting aside time each morning at nine o'clock before the
4 jury arrives at 9:30, is there perhaps a day that we could
5 address it in the morning that will fit within your
6 schedule?

7 MR. FRANK: Whatever the Court's pleasure.

8 Wednesday morning will be fine too, if I can get them
9 filed on time.

10 THE COURT: I would prefer to do it in the morning
11 rather than four o'clock in the afternoon. All right?

12 MR. FRANK: Thank you.

13 THE COURT: Now, Mr. Chalue, could I address you again.
14 Did you have a chance to look at those stipulations?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And are you in agreement with
17 those stipulations?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: One other thing I wanted to address with
20 you, as you probably know that there will come a time in the
21 trial of this case where you, together with counsel, will
22 have to make a decision about whether or not you wish to
23 testify yourself. It is important for you to understand you
24 have a right to testify, if you want to. You also have a
25 right not to testify. That's a decision I know you will

1 make after consultation with your lawyers, but it's
2 important that you understand that it is your decision and
3 your decision alone.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You may be seated.

7 THE DEFENDANT: Thank you.

8 THE COURT: We are in recess until 9:30.

9 (The Court exited at 9:10 a.m.)

10 (* * * * *)

11 (The Court entered at 9:44 a.m.)

12 (The defendant was present.)

13 THE COURT: Counsel, all of the jurors are here. We
14 are ready to go. They are lining up.

15 Have you discussed, Mr. Capeless and Mr. Frank, how you
16 wish to communicate the contents of the stipulation to the
17 jury and when?

18 MR. CAPELESS: Judge, you may notice with a number of
19 them it isn't so much telling the jury, as just agreeing
20 that somebody would be able to testify to something that
21 some other witness might have been called in to do. Most of
22 them are that way. We may only get one or two where we are
23 actually going to have to communicate something to the jury
24 and I don't think there is going to be an issue. I can talk
25 to the Court about it.

1 THE COURT: I will defer to you as to when and how you
2 want to communicate that information, but we should mark the
3 stipulation at least for Identification. I take it you're
4 not asking that it be marked as an exhibit; is that correct?

5 MR. CAPELESS: No, Your Honor.

6 (Exhibit A, stipulation, marked for Identification)

7 THE COURT: Have we also marked the list of potential
8 witnesses?

9 THE CLERK: That will be B for Identification, Your
10 Honor.

11 THE COURT: Very well. As soon as the jury is ready.

12 (Exhibit B, list of witnesses, marked for
13 Identification)

14 MR. CAPELESS: Your Honor, are we going to keep the
15 seventeenth juror?

16 THE COURT: Well, since I announced that it was my plan
17 not to, I intend not to unless either of you would like to
18 be heard on it.

19 MR. CAPELESS: Sixteen is fine; seventeen is better.

20 THE COURT: My plan is to excuse the seventeenth juror
21 if the sixteen do not raise any issues.

22 (Pause)

23 (The jury entered at 9:46 a.m.)

24 THE COURT: Ladies and gentlemen, good morning.

25 THE JURY: Good morning.

1 THE COURT: Two preliminary things. First, thank you
2 for being prompt this morning. We appreciate that very
3 much.

4 Second, thank you again for your patience in the jury
5 selection process earlier this week.

6 Before we actually begin the trial there are some
7 preliminary matters to address and the first is for me to
8 ask you a couple of questions, which I will ask you each
9 morning. And the questions are related to my cautionary
10 instructions from the other day.

11 First, did any of you have any difficulty following my
12 instructions regarding not discussing the case with anyone
13 since you left here during the jury selection process? In
14 other words, did any of you either overhear or participate
15 in any discussions regarding the case?

16 If so, please raise your hand.

17 (Pause)

18 THE COURT: No hands have been raised.

19 And the second question is, did any of you either
20 intentionally or inadvertently gather any information
21 related to the case from any source outside the courtroom
22 since leaving here earlier this week, including any media
23 reports?

24 If you did, please raise your hand.

25 (Pause)

1 THE COURT: Again, no hands have been raised.

2 Now, one additional question that I ask once I have the
3 jurors assembled, did any of you, upon reflection, fail to
4 bring to my attention anything about your own personal
5 experience that you think would have been material to the
6 jury selection process?

7 If so, please raise your hand.

8 (Pause)

9 THE COURT: Again, no hands have been raised.

10 We selected seventeen of you, even though we only
11 needed sixteen. I picked a seventeenth just in case the
12 answer to that last question might have caused some juror to
13 be excused.

14 So with that understanding, Ms. Beaudry, I am going to
15 thank you for your service. And you may now be excused.

16 THE JUROR: Okay.

17 THE COURT: Thank you very much.

18 The next step, ladies and gentlemen, is to make
19 official your status as jurors.

20 Will you please stand and raise your right hand.

21 (The jurors were sworn.)

22 THE CLERK: You may be seated.

23 Ladies and gentlemen of the jury, harken to the
24 Indictments:

25 Number 2011-140, Count 10, the Commonwealth of

1 Massachusetts, Berkshire SS, at the Superior Court holden at
2 Pittsfield, within and for the County of Berkshire, for the
3 transaction of criminal business on the first Tuesday of
4 August, in the year of our Lord 2012, David T. Chalue of
5 Springfield, in the County of Hampden, on or about the 28th
6 day of August, in the year of our Lord 2011, in the County
7 of Berkshire, did assault and beat David R. Glasser with
8 intent to murder him, and by such assault and beating did
9 kill and murder David R. Glasser in violation of
10 Massachusetts General Laws, Chapter 265, Section 1.

11 Indictment 2011-140, Count 11, the Commonwealth of
12 Massachusetts, Berkshire SS, at the Superior Court holden at
13 Pittsfield, within and for the County of Berkshire, for the
14 transaction of criminal business, on the first Tuesday of
15 August, in the year of our Lord 2012, David T. Chalue of
16 Springfield, in the County of Hampden, on or about the 28th
17 day of August, in the year of our Lord 2011, in the County
18 of Berkshire, did assault and beat Robert T. Chadwell with
19 intent to murder him and by such assault and beating did
20 kill and murder Robert T. Chadwell in violation of
21 Massachusetts General Laws Chapter 265, Section 1.

22 Indictment 2011-140, Count 12, the Commonwealth of
23 Massachusetts, Berkshire SS, at the Superior Court, holden
24 at Pittsfield, within and for the County of Berkshire, for
25 the transaction of criminal business, on the first Tuesday

1 of August, in the year of our Lord 2012, David T. Chalue of
2 Springfield, in the County of Hampden, on or about the 28th
3 day of August, in the year of our Lord 2011, in the County
4 of Berkshire, did assault and beat Edward S. Frampton with
5 intent to murder him, and by such assault and beating did
6 kill and murder Edward S. Frampton in violation of
7 Massachusetts General Laws, Chapter 265, Section 1.

8 Indictment 2011-140, Count 13, the Commonwealth of
9 Massachusetts, Berkshire SS, at the Superior Court, holden
10 at Pittsfield, within and for the County of Berkshire, for
11 the transaction of criminal business, on the first Tuesday
12 of August, in the year of our Lord 2012, David T. Chalue of
13 Springfield in the County of Hampden, on or about the 28th
14 day of August, in the year of our Lord 2011, at Pittsfield,
15 in the County of Berkshire, did without lawful authority
16 forcibly or secretly confine or imprison another person, to
17 wit: David R. Glasser, within this Commonwealth, against
18 his will, in violation of Massachusetts General Laws,
19 Chapter 265, Section 26.

20 Indictments 2011-140, Count 14, the Commonwealth of
21 Massachusetts, Berkshire SS, at the Superior Court, holden
22 at Pittsfield within and for the County of Berkshire, for
23 the transaction of criminal business, on the first Tuesday
24 of August, in the year of our Lord 2012, David T. Chalue of
25 Springfield, in the County of Hampden, on or about the 28th

1 day of August, in the year of our Lord 2011, at Pittsfield,
2 in the County of Berkshire, did without lawful authority,
3 forcibly or secretly confine or imprison another person to
4 wit: Robert T. Chadwell within this Commonwealth against
5 his will, in violation of Massachusetts General Laws,
6 Chapter 265, Section 26.

7 Indictments 2011-140, Count 15, the Commonwealth of
8 Massachusetts, Berkshire SS, at the Superior Court, holden
9 at Pittsfield, within and for the County of Berkshire, for
10 the transaction of criminal business, on the first Tuesday
11 of August, in the year of our Lord 2012, the jurors -- David
12 T. Chalue of Springfield, in the County of Hampden, on or
13 about the 28th day of August, in the year of our Lord 2011,
14 at Pittsfield, in the County of Berkshire, did without
15 lawful authority, forcibly or secretly confine, or imprison
16 another person, to wit: Edward S. Frampton within this
17 Commonwealth, against his will, in violation of
18 Massachusetts General Laws Chapter 265, Section 26.

19 Indictment 2011-140 Count 16, the Commonwealth of
20 Massachusetts, Berkshire SS, at the Superior Court, holden
21 at Pittsfield, within and for the County of Berkshire, for
22 the transaction of criminal business, on the first Tuesday
23 of August, in the year of our Lord 2012, David T. Chalue of
24 Springfield, in the County of Hampden, on or about the 28th
25 day of August, in the year of our Lord 2011, at Pittsfield

1 in the County of Berkshire, did directly or indirectly
2 willfully threaten or attempt or cause physical injury,
3 economic injury, or property damage to David L. Glasser, a
4 witness or potential witness at any stage of a criminal
5 investigation, Grand Jury proceeding, trial, or other
6 criminal proceeding of any type, with the intent to impede,
7 obstruct, delay, harm, punish or otherwise interfere thereby
8 with a criminal investigation, Grand Jury proceeding, trial,
9 or other criminal proceeding of any type in violation of
10 Massachusetts General Laws, Chapter 268, Section 13, capital
11 B(1) small (A)I.

12 Indictment 2011-140 Count 17, the Commonwealth of
13 Massachusetts, Berkshire SS, at the Superior Court holden at
14 Pittsfield, within and for the County of Berkshire, for the
15 transaction of criminal business on the first Tuesday of
16 August, in the year of our Lord 2012, David T. Chalue of
17 Springfield, in the County of Hampden, on or about the 28th
18 day of August, in the year of our Lord 2011, at Pittsfield,
19 in the County of Berkshire, did directly or indirectly
20 willfully threaten, or attempt or cause physical injury,
21 economic injury, or property damage to Robert T. Chadwell, a
22 witness or potential witness at any stage of a criminal
23 investigation, Grand Jury proceeding, trial, or other
24 criminal proceeding of any type with the intent to impede,
25 obstruct, delay, harm, punish or otherwise interfere thereby

1 with a criminal investigation, Grand Jury proceeding, trial,
2 or other criminal proceeding of any type in violation of
3 Massachusetts General Laws Chapter 268, Section 13, capital
4 B(1), small A(I).

5 Indictment 2011-140, Count 18, the Commonwealth of
6 Massachusetts, Berkshire SS, at the Superior Court holden at
7 Pittsfield, within and for the County of Berkshire, for the
8 transaction of criminal business, on the first Tuesday of
9 August, in the year of our Lord 2012, David T. Chalue of
10 Springfield, in the County of Hampden, on or about the 28th
11 day of August, in the year of our Lord 2011, at Pittsfield,
12 in the County of Berkshire, did directly or indirectly
13 willfully threaten or attempt or cause physical injury,
14 economic injury, or property damage, to Edward S. Frampton a
15 witness or potential witness at any stage of a criminal
16 investigation, Grand Jury proceeding, trial, or other
17 criminal proceeding of any type with the intent to impede,
18 obstruct, delay, harm, punish or otherwise interfere thereby
19 with a criminal investigation, Grand Jury proceeding, trial,
20 or other criminal proceeding of any type, in violation of
21 Massachusetts General Laws Chapter 268, Section 13, capital
22 B(1) small A(I).

23 To these indictments the defendant pleaded that he is
24 not guilty, and for trial thereof puts himself upon his
25 country which country you are.

1 You are now sworn to try the issues. If he is guilty
2 you will say so, if he is not guilty you will say so and no
3 more.

4 Ladies and gentlemen of the jury, harken to your
5 evidence.

6 THE COURT: Ladies and gentlemen, the documents that
7 Miss Capeless just read to you are called the indictments
8 and it's important that you understand that the indictments
9 are not evidence in and of themselves. They are merely a
10 formal mechanism to begin the criminal process.

11 As I mentioned earlier, Mr. Chalue is presumed
12 innocent. The Commonwealth has the burden of proving his
13 guilt beyond a reasonable doubt.

14 You should draw no adverse inference against Mr. Chalue
15 from the mere fact that he has been indicted.

16 Now, I want to taken just a few minutes and explain to
17 you the process of the trial so that as it unfolds before
18 you, you will understand its component parts.

19 The first thing you're going to hear will be the
20 opening statements of counsel.

21 Each side will have an opportunity to give you an
22 overview of what they anticipate the evidence will show.

23 Much like the indictments, the opening statements -- in
24 fact, any statement of counsel are not evidence in the case.
25 But it is an opportunity for each of the attorneys to give

1 you a preview of what they believe the evidence will
2 establish, so that as it comes in some small pieces you will
3 understand how it relates to the whole.

4 Because the Commonwealth has the burden of proof,
5 Mr. Capeless will have an opportunity to speak first on
6 behalf of the Commonwealth; then if he chooses to, Mr. Frank
7 will have an opportunity to provide an opening statement on
8 behalf of Mr. Chalue.

9 Because the defendant has no burden of proof, Mr. Frank
10 may make an opening statement or he may reserve his opening
11 statement at the close of Commonwealth's case or he may
12 choose to make an opening statement. That's entirely his
13 decision.

14 After the opening statements have been made, we will
15 then proceed to the presentation of evidence. And again,
16 because the Commonwealth has the burden of proof, they will
17 go first and Mr. Capeless will start by calling witnesses,
18 who will come into the courtroom, take an oath, sit in this
19 chair right over here, and respond to questions from
20 Mr. Capeless on what is known as direct examination.

21 After the direct examination is complete, then
22 Mr. Frank will have an opportunity to ask questions of the
23 same witness on cross-examination.

24 After cross-examination is complete, then I will turn
25 to Mr. Capeless for what is known as redirect examination,

1 limited to those areas that have been covered on
2 cross-examination. And then, finally, I will come back to
3 Mr. Frank to see if he has any recross-examination, which is
4 a long way of saying that each attorney will have two and
5 only two rounds of questioning for each witness.

6 If this case is like most, from time to time there will
7 be objections posed by one lawyer when the other lawyer asks
8 a question. It is their obligation to do so if they feel
9 that evidence is being presented which is contrary to the
10 Rules of Evidence. I will then be called upon to make a
11 ruling regarding that evidence or the proposed question and
12 answer. If I agree with the objection I will say
13 "sustained" which means, if any answer was given you should
14 disregard it. If I disagree with the objection, I will say
15 "overruled" and the answer can be given, and you can
16 consider it in its entirety.

17 Now, there may be occasions where I need to hear more
18 than the simple word "objection" which is the lawyers will
19 do in the first instance. They will stand and say,
20 objection. If I understand it, I will rule in the manner I
21 have just described. If I feel that I need to understand
22 more before I can make an educated decision, I will ask the
23 lawyers for the legal basis for their objection in which
24 case I'm simply asking them to give me a citation to the
25 Rule of Evidence that they are relying upon, in a word or

1 two; which they understand.

2 There may be still other occasions where I will need to
3 hear more in order to make a decision, that is I will need
4 to hear a little bit more about what the anticipated
5 response will be and I might need to hear some arguments
6 from counsel about the merits of their objection.

7 In those circumstances, which I hope will be limited, I
8 may ask the attorneys to see me at the sidebar, which during
9 the course of the trial, will be this corner of my bench
10 right here. (Indicating)

11 And I will meet them there with the stenographer, and I
12 will hear argument from them on the nature of the objection
13 and the opposition to the objection. We try to keep those
14 visits to a minimum because they have a way of delaying the
15 proceedings.

16 But I wanted you to know that sometimes will happen and
17 why it happens, not because we're trying to keep from you
18 important information that would be relevant to your
19 decision making in the case, but we're trying to make
20 certain that all you hear is permissible under the Rules of
21 Evidence.

22 We will proceed witness by witness in that fashion
23 through the case until the Commonwealth has rested. That is
24 it has presented all of the evidence that it intends to.
25 And then I will turn to Mr. Frank to see whether or not he

1 wishes to present evidence. Again, bear in mind he has no
2 obligation to do so.

3 If he chooses to present evidence, then we will proceed
4 in the same fashion except Mr. Frank will be asking the
5 questions on direct examination and Mr. Capeless or one of
6 his colleagues will have an opportunity to
7 cross-examination. And we will follow the same procedure.

8 Then, assuming for the moment there is some defense
9 evidence presented, I would, at the close of that evidence,
10 turn to Mr. Capeless to ask whether or not he has any
11 evidence to present, rebuttal to the defense case that was
12 presented.

13 Now, let me talk for just a moment about the relative
14 roles of the participants in the trial.

15 Let me start with the lawyers. As you probably
16 understand, they are advocates. They represent a client,
17 and it is their ethical obligation to zealously represent
18 that client. Our roles, meaning mine and yours are quite
19 different. We are not advocates. We are neutrals. We are
20 all judges. I will be the judge of the law and it will be
21 my responsibility to make decisions on what evidence you
22 hear, and what legal principles to instruct you on at the
23 end of the case, and sometimes during the course of the
24 evidence, I will interrupt and gave you legal instructions.

25 It's also my responsibility to manage the trial, to

1 make certain that it proceeds fairly and efficiently.

2 You will act as judges as well, but you will be judges
3 of the facts. Collectively, you will consider the evidence,
4 and determine from that evidence what the facts in this case
5 are.

6 And to the extent that there are conflicts in the
7 testimony, or discrepancies in the evidence, you will be
8 called upon to resolve those conflicts and determine where
9 the truth lies. And at the end of the trial, one of the
10 things I will explain to you, are the tools that you can
11 employ in determining the believability of the credibility
12 of certain evidence that comes before you.

13 But again, that will be your function and your function
14 alone to determine what the facts are in this case and then
15 to apply those facts to the law as I explain it to you.

16 My final responsibility in this case, at the very end,
17 will be to instruct you on the legal principles that apply
18 to the charges in this case and the evidence that has come
19 before you.

20 And I will do that in two ways. First, I will do it as
21 I am doing it now, I will speak to you in open court, and
22 instruct you on those legal principles; but, by that time I
23 will have prepared a document which contains all of those
24 legal principles, and I will be referring to, and in some
25 instances, reading from that document, which I will then let

1 you take into the jury deliberation room with you, for your
2 guidance, if you find it will be helpful.

3 So, after the evidence is closed, there are two
4 important phases of the case that remain, one of which I
5 just touched upon, my instructions of law which comes at the
6 very end. The other important phase of the case that will
7 remain after you've heard all of the evidence is the closing
8 arguments of counsel.

9 Again, the arguments of counsel are not evidence, but
10 it is an important opportunity for each lawyer to summarize
11 for you what they believe the evidence has established, how
12 it relates to the particular charges in this case and it
13 will be their opportunity to attempt to persuade you that
14 their theory of the case is the correct one.

15 After the closing arguments, I will instruct you as I
16 just described and then and only then will you begin your
17 deliberations in this case.

18 Now, let me pause now and comment again on some of the
19 cautionary instructions I gave you earlier when you were
20 selected as a juror.

21 It is very important during the course of this trial
22 that you keep an open mind.

23 You're going to hear weeks' worth of evidence, but it
24 will be inappropriate for you to draw a conclusion based on
25 what you've heard until you've heard it all, so I want you

1 to keep an open mind. Don't draw any conclusions. Don't
2 discuss the case among yourselves. Don't observe any media
3 reports should there be any. Don't conduct any independent
4 research, and by that I mean don't go to any locations you
5 might hear described. Don't conduct any electronic research
6 of any legal concepts or names or phrases that you hear.

7 Don't talk to your neighbor who might be a lawyer about
8 what you're seeing and hearing in the courtroom. Just keep
9 in mind that everything you need to do your job in this case
10 will be provided to you within these four walls.

11 And to go beyond these four walls to attempt to
12 independently gather information will be a violation of your
13 oath. I am ordering you not to do so.

14 And I'm -- I say that only because when we cannot
15 control what information comes to you, that information
16 doesn't stand the test of cross-examination in the courtroom
17 and therefor will be completely inappropriate for you to
18 rely upon.

19 It's also important that you not -- not only that you
20 not discuss the case, but that you not post on any
21 electronic media your participation as a juror. Not because
22 we believe that you would attempt to do anything
23 inappropriate, but posting in that way has a way of inviting
24 comment from other people that would be completely
25 inappropriate for you to consider.

1 So please, don't do that. Don't discuss the case. And
2 remember to keep an open mind.

3 Now, after the opening statements are complete, I'm
4 going to ask the Court Officers to deliver to you notebooks
5 for your use, if you decide to use them. It's not required.
6 These are blank pieces of paper. We will give you a writing
7 instrument. Some people find it's helpful to jot things
8 down at the time they hear them, if they think they are
9 important, so that they can perhaps more easily remember
10 them in the future.

11 Other people find that's not necessarily helpful to
12 them. Whether or not you take notes is entirely up to you.
13 If you do take notes, please do not try to create a verbatim
14 record of everything that is happening here in the
15 courtroom. We have someone else, Ms. Cayode Kyles, who will
16 do that for us.

17 Keep in mind that often the demeanor of a witness is as
18 important, sometimes more important, than the content of
19 what they are saying. I would not want your note taking to
20 distract you from your own observations of the witnesses'
21 manner in responding to questions.

22 If you choose to take notes, they are for you and you
23 alone. Do not share them with other jurors. They are there
24 as an aid to your own memory and concentration, and the fact
25 that someone chooses to take notes or not does not

1 necessarily mean that their memory is any better or any
2 worse than someone who did.

3 To encourage candor in your note taking, ladies and
4 gentlemen, you should know at the end of every trial we are
5 going to collect those notebooks and keep them in a secure
6 place and at the end of the trial we will destroy them so no
7 one will see them or be exposed to them except you.

8 Now, let me make a very brief comment on the scheduling
9 of the trial. As I think I told you when you were selected
10 as jurors, the lawyers and I are going to meet at nine
11 o'clock to discuss preliminary matters that might otherwise
12 arise during the trial day and might necessitate you leaving
13 the room if we were -- if we hadn't already addressed those
14 matters. So we are going to plan to start each trial day in
15 the courtroom at 9:30.

16 The lawyers and I will meet in the courtroom at 9:00,
17 address those preliminary matters, so we are not wasting
18 your time and can move efficiently through the trial
19 throughout the day.

20 Now, having said that, I do need to forewarn you that
21 in most trials, especially one of this duration, there will
22 be times when we either have to have those sidebar
23 conversations where I need to ask you to leave the courtroom
24 because I need to hear argument from the lawyers outside of
25 your presence.

1 Again, that's done only to make certain that what you
2 hear will be admissible evidence in this case.

3 And we will try to keep those recesses to a minimum so
4 that we can efficiently use the time that you have very
5 graciously agreed to give us in this case.

6 Those are my preliminary instructions, ladies and
7 gentlemen. We are now prepared to commence the trial.

8 As I said, the Commonwealth has the burden of proof, so
9 Mr. Capeless has an opportunity to speak to you first.

10 Mr. Capeless, you may make your opening statements.

11 MR. CAPELESS: Thank you. Your Honor.

12 **OPENING STATEMENT BY MR. CAPELESS**

13 MR. CAPELESS: Your Honor, Counsel, ladies and
14 gentlemen of the jury, over 2 1/2 years ago when we charged
15 the Defendant and his two accomplices with kidnapping,
16 murder, and witness intimidation we well understood the very
17 serious nature of those accusations and we well understood
18 that one day the responsibility that comes with such
19 accusations would come due. For this defendant, David
20 Chalue, that day has come and I stand here now to tell each
21 and all of you together as a jury, that we will prove each
22 and all of the charges against him and we will do so beyond
23 a reasonable doubt.

24 When this case is concluded, all the evidence has been
25 heard, you have heard the jury's instructions and you have

1 fully and fairly deliberated as jurors, you will return to
2 this courtroom somberly but confidently with verdicts of
3 guilty.

4 We will prove, ladies and gentlemen, that in the early
5 morning hours of Sunday, August 28, 2011, the Defendant and
6 two other men, Adam Hall and Caius Veiovis, went to the
7 first floor apartment of 254 Linden Street in Pittsfield,
8 and there they kidnapped David Glasser, his roommate Edward
9 Frampton, and their neighbor and friend Robert Chadwell.
10 They drove them to a remote location within Berkshire County
11 and killed them by cutting, stabbing and shooting them.

12 Then they cut up their bodies severing the heads, the
13 arms, the legs, and two of the torsos in half, put the
14 pieces in 15 plastic bags and the following morning, Monday,
15 dug a ditch on a private property in Becket -- unbeknownst
16 to the owner -- and tossed the bags into the ditch, covered
17 them over, and then went about the process of trying to
18 cover up the gruesome crimes that they committed.

19 We will prove that they did this because David Glasser
20 was a witness against Adam Hall in two cases that were
21 scheduled to go to trial in Berkshire Superior Court in
22 several weeks from that August weekend, and that Hall had
23 already tried unsuccessfully to intimidate and discredit
24 David Glasser to avoid convictions in those cases.

25 We will present that evidence, ladies and gentlemen, in

1 a number of ways, of course from witnesses, who will tell
2 you what they saw and what they heard, and in some instances
3 how they felt.

4 You will learn about the motive, the plan to
5 intimidate, discredit and ultimately to kill David Glasser
6 and tragically the two friends who were with him.

7 But you will also hear from the defendant's own words,
8 not just admitting that he did these horrible acts but
9 bragging about them, celebrating, mocking the pitiful pleas
10 of the victims and angrily threatening to do the same to
11 someone else.

12 There will be other evidence corroborating those
13 witnesses, surveillance videos as to what they did or just
14 when they did it, cellular telephone records corroborating
15 when events happened, the date the hour, and sometimes the
16 second. And it will also be a cellular telephone analysis
17 by an FBI expert who will testify in this case corroborating
18 the testimony the night of the kidnapping and murders; Adam
19 Hall stopping on the way to get the guns that were used and
20 meeting up with his accomplices; corroborating his trip to
21 Canaan, New York to enlist a fourth man in helping to bury
22 the bodies, and then placing this Defendant and Adam Hall at
23 or near the burial site, the remains of those poor men --
24 when those remains of the poor men were dumped in the
25 trench.

1 You're also going to hear about the text messages from
2 the Defendant at the time of burial while he was acting as a
3 lookout for Adam Hall and the other man.

4 Now, in this case, ladies and gentlemen, we are
5 charging this Defendant as a joint venturer along with two
6 other men who I have mentioned. Those are Adam Hall and
7 Caius Veiovis. During the course of this trial, you will
8 hear them referred to by other names. The Defendant at the
9 top, many people will call him Davey. That's how they knew
10 him. On the lower left, Adam Hall goes by the nickname of
11 Leo. And on the lower right, Caius Veiovis, who many people
12 know of and will refer to in the course of their testimony
13 as Trash. (Indicating)

14 The evidence in this case will focus much on Adam Hall,
15 but the actions of all three are to be considered together
16 as acting together as joint venturers, the acts of each and
17 all as if they are one person.

18 Now, there was also in this case an accessory, David
19 Casey, who you see his picture here, who Hall cajoled and
20 threatened to assist in the burial. (Indicating)

21 But this case is not just about the four people
22 involved in the kidnapping, murder, and intimidation and
23 finally the burial of those three men. It's about the
24 victims. On the top, David Glasser; on the lower left,
25 Edward Frampton; and the lower right Robert T. Chadwell.

1 (Indicating)

2 You're going to learn about them as well as who they
3 were while they lived.

4 Now, the testimony in this case is also going to focus
5 on a number of locations here in Berkshire County. First,
6 254 Linden Street where David Glasser lived with Edward
7 Frampton. And as you will hear, that Robert Chadwell lived
8 across the street.

9 There will be much testimony about a location not very
10 far away at 122 Madison Avenue. This was, at the time, the
11 home of the Sutton family -- Karen and Ed Sutton who had a
12 number of daughters who will come in and testify in this,
13 who were very much associated with Adam Hall and then
14 ultimately with this Defendant and Mr. Veiovis.

15 You are also going to hear about the Hells Angels
16 clubhouse where a number of events took place and will be
17 referenced by a number of witnesses. This is located south
18 of Pittsfield in Lee, Massachusetts. And on the -- and you
19 will hear testimony particularly on the night that this
20 happened, this is where they first gathered. The Defendant
21 then stopped this location here in Lenox, to get the guns
22 that were used. Finally going to the apartment over here of
23 Caius Veiovis back in Pittsfield. (Indicating)

24 There are other locations here involved. You will hear
25 talk about the defendant's own property in the rural town of

1 Peru, east of Pittsfield. Also, of the home just over the
2 line in Canaan, New York of this estate here where the
3 fourth person, David Casey, worked as a kind of a caretaker
4 there.

5 And then, finally, you're going to hear about this
6 location here down in the rural Becket, south of Pittsfield.
7 This location where the bodies were stored overnight Sunday
8 night at the Pavoni residence in Becket, and then finally,
9 unbeknownst to the owner, the Cole property in Becket as
10 well, where the bodies were buried.

11 Now in this case, the Commonwealth accuses the
12 Defendant of murder and we will prove that he committed
13 first degree murder and we will ask you to return
14 indictments for that.

15 Now, as you will hear from the Judge there are two
16 prongs of deliberate -- of murder in the first degree.
17 First, deliberate premeditation and you will hear about
18 them, this Defendant and his accomplices talking about it,
19 planning it, and eventually executing that plan. And also,
20 a separate prong of extreme atrocity or cruelty.

21 You will hear evidence that he didn't just kill them
22 but they tortured the three men before they did. You'll
23 hear testimony about the defendant's own statements to
24 another man that they were tortured upon torture, cut up
25 alive and made to watch. And Hall's statements about

1 gutting, cutting, torturing, making him watch.

2 And you will learn and hear about the injuries that
3 their bodies suffered that are consistent with that torture,
4 and we will ask you to return not just a guilty verdict of
5 first degree murder, but a guilty verdict on both prongs of
6 first degree murder.

7 Now, you will hear evidence in this case, ladies and
8 gentlemen, that the Defendant and Hall and Veiovis took
9 pains to cover up the crimes, some of those efforts worked
10 to a degree. Despite a thorough ongoing investigation, the
11 crime and death scene have never been determined; the
12 weapons that were used have never been located; no DNA
13 evidence linking the Defendant to the victims or vice versa;
14 just as importantly, no DNA evidence linking anyone else to
15 the murders has been developed.

16 Now, some of those efforts were sloppy. They did get
17 rid of forensic evidence in this case, but later their
18 efforts were uncovered by investigation. You'll hear
19 testimony about them throwing clothing and a weapon off a
20 bridge in broad daylight in Lenox Dale, Massachusetts seen
21 by witnesses. They crushed the car that was used to
22 transport the bags carrying the bodies at a local junkyard
23 in Lanesborough, Massachusetts. And there are photographs
24 of them doing that. The Defendant and Hall taking that car
25 in to have it crushed, that they burned clothes at the Hells

1 Angels clubhouse in Lee. And then, eventually, after this
2 was over, they attempted countersurveillance on the
3 investigators on the case at a garage and lot nearby where
4 the State Police cars were parked, and also the State Forest
5 when investigators were out trying to determine where the
6 crimes had been committed.

7 There were other means of investigation which the
8 Defendant and his accomplices did not think about, but you
9 are going to hear testimony about. Despite their efforts to
10 thwart cell phone tracking, they were still caught
11 electronically and that evidence, as you will hear,
12 corroborates their obtaining the guns used and placing the
13 Defendant and Hall at or near the scene of the burials.

14 And despite their efforts and their schemes, you will
15 also hear and will be proven to you that they never learned
16 that the most dangerous evidence comes from those that they
17 thought were too afraid or too loyal to turn and to testify
18 against them. Because you're going to hear testimony from
19 an accomplice David Casey, a teenage girl, fellow inmates,
20 and fellow brothers in the Aryan Brotherhood with the
21 Defendant who will come in and testify about what he said
22 and his accomplices said in admitting that he committed
23 these crimes.

24 Now, a portion of the case will be devoted to testimony
25 demonstrating why all of this happened. The motive for it.

1 As I said, David Glasser was a witness against Hall --
2 against Adam Hall in one and then in a second case and he
3 tried -- Hall tried to intimidate Glasser from testifying.
4 And you're going to learn about the various schemes to
5 discredit or frame him from crimes that he did not commit.

6 First, you're going to hear this starts back in July of
7 2009 over a few carburetors that belonged to the Defendant
8 that David Glasser took to a recycling yard to have them
9 scrapped to get a little bit of money. The Defendant heard
10 about it, went down and identified and got them back and
11 decided that he was going to take recompense from Glasser.
12 And on July 21 of that year, he lured David Glasser up to
13 his home I talked to you about in Peru.

14 You're going to hear from his then girlfriend at the
15 time who also eventually became the mother of Adam Hall's
16 child, that she came to the house after she had been told by
17 Adam Hall that he was going to meet David Glasser up in
18 Peru. And when she arrived there she found Glasser on his
19 knees, Hall yelling at him and eventually hitting him with a
20 baseball bat. Told her to go get a pen and paper, she does
21 this. And Hall, at that point forces David Glasser to sign
22 over the registration, the title to the truck that David
23 Glasser owned. And you're going to learn from the people
24 who knew David Glasser that that truck was the most
25 important thing in his life.

1 Hall then drives -- makes Glasser drive the two of them
2 down to Berkshire Medical Center where he drops him off and
3 drives away.

4 Now, State Police detectives hear about this and they
5 invite David Glasser in to speak with them. And you're
6 going to see a short video clip of that interview in which
7 during Adam Hall calls David Glasser, he puts him on speaker
8 phone and you hear him say: So you decided to do it the
9 other way.

10 And, again, this is where it starts. Now, he's going
11 to try to intimidate David Glasser, but Glasser puts him
12 off. Officers investigate it, they arrest Hall, they find
13 the bat used in his Hummer, and you will later hear from
14 witnesses that he admits to it that he had beaten Glasser
15 because of the carburetors.

16 Now, while those charges are pending, Hall comes up --
17 you will hear from other witnesses -- with various schemes
18 with not only with women, but with men, trying to get them
19 to, either their girlfriend, and in one instance asking
20 somebody to have her sister testify variously that Glasser
21 had attacked them and attempted to rape them in an effort to
22 try to discredit them. None of these people agreed to do
23 this, but you're going to hear about the growing
24 determination on the part of Adam Hall, the desperation on
25 his part to discredit David Glasser to try to stop him from

1 testifying.

2 Now, in August of 2010, when the first case is about to
3 come up for trial the following month of September, Hall
4 enlists three people -- Scott Langdon, Nicole Brooks, and
5 now his new girlfriend who is also pregnant with his child
6 Alexandra Ely in a far more elaborate scheme to try now to
7 frame David Glasser.

8 This scheme involves getting Glasser over to New York
9 on a ruse that he's driving Langdon over there for a job
10 over there, okay. And that Nicole Brooks is then going to
11 go to the New York State Police and claim that she was
12 attacked by a man who shot at her and tried to rob her when
13 she was stopped at a roadside rest area.

14 And you will also hear, as part of this plan which they
15 carried out, that when Glasser takes Langdon over to drop
16 him off that, with a package provided by Adam Hall, in a bag
17 was a gun and also the wallet of Nicole Brooks. That was
18 placed behind the seat of David Glasser so after Nicole
19 Brooks gets to State Police, New York State Police, they
20 investigate it, they alert the authorities in Pittsfield,
21 and eventually arrest Glasser and find the gun and the
22 wallet.

23 This is where that scheme begins to unravel because in
24 looking through the wallet they find a receipt for a local
25 grocery store in Pittsfield on the date that this attack is

1 supposed to happen and they wonder why this young woman from
2 New York is over in Pittsfield on the same day when this
3 happens.

4 And they go and look at the video and she see her there
5 in this and eventually talking to her, she admits what
6 happens, and Scott Langdon admits what happened, and
7 eventually you will hear Alexandra Ely admits what happened.
8 And the three of them together have agreed to cooperate and
9 they will testify here and tell you about that scheme and
10 what they did.

11 Now, they and others, cooperating witnesses in the
12 case -- some with pending charges, some who have actually
13 been convicted and are under sentence, you'll hear that each
14 one of them will tell you there were no promises. They hope
15 that by cooperating that they will have some help to them in
16 some -- those who have charges against them, obviously have
17 Fifth Amendment privileges. They can refuse to testify.
18 Some have been given immunity, but keep in mind, those
19 witnesses who have been given immunity, they are still
20 liable for perjury and they are not given immunity if they
21 lie here in court.

22 Now, with that scheme having unraveled, Hall being
23 charged with that in August of 2011, the two cases now
24 together are scheduled to go to trial in Berkshire Superior
25 Court in several weeks, and Hall urged on by the Defendant

1 David Chalue finally makes the decision that all these
2 schemes aren't going to work, he's just with going to have
3 to make him disappear. And this is the weekend of Saturday,
4 August 27 into Sunday, August 28. And this is the weekend
5 of Tropical Storm Irene that hit this whole area of New
6 England with an awful lot of rain and wind in Berkshire
7 County. And this is how witnesses will recall and focus
8 upon the weekend of the storm.

9 Now, at that time David Glasser lived at 254 Linden
10 Street with Ed Frampton. And is classified as
11 developmentally disabled. He had a caseworker help him with
12 organizing his life. And Glasser was receiving care from
13 the Brien Center, a mental health facility. They were both
14 receiving SSI benefits. They were not employed.

15 Glasser made some money driving people around in that
16 truck that he loved.

17 Their neighbor, Robert Chadwell, also lived across the
18 street and oftentimes stayed other places, whether it was
19 his daughter, other relatives, or his friends Ed and David.

20 Now, on Saturday afternoon, you'll hear from the
21 testimony that Robert Chadwell stops at the apartment and he
22 ends up staying there. Now, Chadwell has a close friend,
23 his boyfriend, Willy Haywood. And they stay in contact with
24 each other through cell phone throughout the day. You're
25 going to see records showing numerous phone calls back and

1 forth between the two, and finally one last phone call. The
2 last contact with those three men at is 11:21 on Saturday
3 night and then they are never heard from again.

4 The next day, Willy Haywood and Robert Chadwell's
5 brother trying to get ahold of him can't get ahold of him.
6 The upstairs neighbor comes down, she can't get out of their
7 driveway because David Glasser's truck is blocking it and
8 they knock on the door and there is no answer. Then on
9 Monday, Ed Frampton doesn't respond to any calls from his
10 social worker. He misses medical appointments. And so,
11 people start going over there. No answer. The TV is on.
12 Ed Frampton's cat is there. There is no sign of the three
13 of them.

14 Finally, on Wednesday, missing person report is made.
15 The State Police, Pittsfield Police Investigators converge
16 on the neighborhood and begin a search that ends 10 days
17 later when their dismembered remains are found buried in
18 that trench in Becket.

19 As I mentioned, several of the cites are located in
20 Pittsfield, but others are outside, in particular Becket, a
21 very rural town south; and Peru, very rural, away from
22 Pittsfield.

23 You're going to learn from the testimony that this
24 Defendant David Chalue knew Hall from before and saw him, as
25 he described, as a means to get access to guns and other

1 weapons because Hall was a member of the Hells Angels. And
2 you're going to hear witnesses describe how he appears in
3 Pittsfield from Springfield about a week or so before the
4 storm and that he and Hall remain together throughout the
5 next several weeks leading up to and after.

6 And in most of that time, they are also accompanied by
7 the third man, Trash, Caius Veiovis.

8 You will hear that Hall knew Veiovis through the Hells
9 Angels, even described Veiovis as being a "prospect". He
10 was not a full member. They were not close, but you will
11 hear they started hanging out just before and after the
12 weekend of the storm.

13 You're going to hear about Veiovis, Trash, and another
14 friend Eric Fox going to the Home Depot on the Wednesday
15 before that weekend of the storm. You'll see photos of them
16 at the Home Depot. They ask about saws, but eventually
17 examine hatchets and axes there.

18 And on the Friday night, the night before, young woman
19 by the name of Katelyn Carmin will tell you she was at the
20 Hells Angels clubhouse in Lee with this Defendant, Hall and
21 Veiovis. That she was riding ATVs with the other two and
22 Hall cautions her not to let them get injured because I need
23 them for something.

24 And that will be verified, the date of when that
25 happened, by phone calls that she made to get a ride to take

1 her back to New York from there.

2 Finally, on the afternoon of the 27th on Saturday,
3 you're going to see the three of them together in
4 photographs at a Hells Angels party being celebrated right
5 here in Springfield at the McKinney & Burbach Tavern.

6 Surveillance by the Springfield intelligence --
7 Springfield PD Intelligence Unit, show the three of them
8 together and eventually leaving the site of the party in a
9 gold Buick, which Hall had recently bought.

10 Finally, you'll learn about on Saturday evening, that
11 the Defendant, Adam Hall, and Veiovis agree to meet with
12 several women, Kayla Sewell and Allyson Scace down at the
13 Hells Angels clubhouse. That they then plan to go from
14 there up to Veiovis' apartment, Cloverdale Street, up in
15 Pittsfield. That the Defendant, Veiovis/Trash and the two
16 women go in the women's car and drive straight up to
17 Pittsfield, but that Adam Hall goes in a separate car, and
18 they noticed, as they get up to Lenox, he pulls off. And
19 you're going to learn from Steven Hinman he stopped off
20 there. And that's where he showed him he had one gun and he
21 got two more.

22 And you will learn about him finally showing up at the
23 apartment where the others are and that the young women see
24 guns that Adam Hall takes out of a dog food bag at that
25 apartment in Cloverdale Street, and that the Defendant and

1 Hall are examining what appears to be cleaning the guns in
2 preparation for the murders.

3 Now, at about 1:30 a.m. and now it's into Sunday
4 morning, you're going to hear testimony that Hall arrives at
5 that Sutton residence at 122 Madison Avenue with the
6 Defendant and Trash in Trash's Jeep.

7 And that he goes in -- Hall goes in and sees his then
8 girlfriend Alexandra Ely, but he also asks Rose Dawson, one
9 of the daughters who's there, for her cell phone. Gets it
10 from her and tells her not to tell anyone that he has it.

11 And after then, and before 5:00 a.m. all of the
12 evidence together and the defendant's statements will
13 circumstantially tell you that David Glasser, Edward
14 Frampton, and Robert Chadwell were kidnapped from that
15 apartment and they were killed.

16 You're going to hear about the aftermath the immediate
17 aftermath at about 5:00 a.m. Hall goes into a convenience
18 store, the A-Mart in Pittsfield. That he's driving the gold
19 Buick, that he comes in, he's soaking wet, and that he buys
20 three candy bars. Goes out, but quickly comes back in and
21 makes another purchase, cigarettes and cigars. And you're
22 going to hear Hall doesn't smoke, but the brands that he
23 purchased were those used by the Defendant and by
24 Veiovis/Trash.

25 Hall comes back to the Sutton residence shortly

1 thereafter. He drops off the Buick. Leaves in Veiovis'
2 Jeep, but comes back later in the morning and asks Alexandra
3 Ely and Rose Sutton to come up to the house in Peru to make
4 breakfast, but he cautions them. He gives them money for
5 that -- they will describe the money was wet. And then he
6 tells them to wash their hands after they use the money.
7 And he tells them: Don't look in the bag that's in the
8 floor of front seat of the gold Buick.

9 But, of course, Rose decides she's going to do that.
10 And she will tell you about seeing a glove that was in
11 there.

12 That when the two young women come to the residence in
13 Peru, the Defendant and Veiovis looks exhausted, but Hall is
14 upbeat. He's talking on the phone. He's trying to get a
15 truck from whomever he is calling. And you will learn about
16 the three of them are seen together later that afternoon in
17 Pittsfield on East Housatonic Street. And you'll see
18 shortly thereafter a police surveillance photo that is taken
19 of that Jeep of Veiovis going back to his apartment.

20 Now, it's later on that afternoon, you will hear
21 testimony from David Casey, that Hall comes to recruit him
22 now because they need to bury the bodies.

23 You will hear from Casey, who is still being held in
24 jail on charges as an accessory. He is cooperating and he
25 is testifying. And he'll tell you that Hall came to that

1 compound there in Canaan, New York just over the border. He
2 asked to talk to Casey and he got inside, he asked if he
3 knew a place he could leave his car overnight. He was
4 having trouble with it and it was in Becket. And so Casey
5 said, Yes, I have a friend, Al Pavoni. And he makes a call
6 to him, Pavoni agrees to it, and he tells Hall this.

7 And at this point Casey will describe to you that Hall
8 says to him: I finally got him. I ousted him.

9 Casey will describe he knew he was talking about David
10 Glasser because he was aware of these charges. Hall had
11 talked about it before.

12 And Hall told him about holding Glasser and a gun to
13 his head. He pulled the trigger, it didn't go off, Glasser
14 took off. He was chased by somebody else, shot, and brought
15 back. Hall describes, saying, Well, why did you do that
16 he's mine. I want him.

17 When they bring him back, that Glasser is pleading:
18 Please don't shoot me. Don't.

19 Casey will tell you how Hall told him: I told you what
20 would happen if you witnessed against me.

21 And then he shot him in the head.

22 He will tell you he described they had also stabbed
23 someone else. They thought he was dead. They came back a
24 short while later, he's sitting up on a log groaning and
25 then they had to kill him.

1 He also recalled mentioning -- Hall did, about they
2 had, quote, trouble cutting up the fat guy. And also that
3 Hall said: I didn't mind shooting the nigger.

4 And those were the words that Dave Casey will say Hall
5 used. He said, quote, they gutted them. He held up
6 Glasser's head after he cut it off and made fun of him
7 because he looked so ugly he thought. He said it was
8 raining hard. He said he enjoyed doing it in the rain. He
9 was happy he killed him. Even if he had to spend the rest
10 of his life in jail he didn't care.

11 Now, he asked Casey if he could help him to bury the
12 bodies. Casey will tell you he didn't want to do this, but
13 eventually agreed to because Hall made some allusions about
14 Casey and also his sister who was the girlfriend of Scott
15 Langdon, that nothing would happen to them, their case or
16 their persons if he cooperated and went along with us.

17 He asked about the excavator that Hall knew that Casey
18 had and it was up in Becket.

19 And so, that night, Hall drives the gold Buick up to
20 the home on Johnson Road, the Pavoni home, there -- where
21 he's met by Pavoni and one of the residents there and leaves
22 the vehicle there.

23 You're going to hear about the following morning, the
24 Defendant and Hall arrive together, then later joined by
25 Casey. And the two women who were there, Mr. Pavoni's

1 girlfriend and her daughter, who will identify all three of
2 them who were there and they will describe how she
3 identified for the police, not just this Defendant, but also
4 Hall, but also Casey who they knew.

5 And that after they pick up the car that David Casey
6 and Hall go in Casey's truck, they drive to the Cole
7 property, make sure that Cole is not home. Come back, get
8 the gold Buick and drive it over to the Cole property and in
9 a separate car, a third car, is the Defendant. And he waits
10 outside the property as a lookout.

11 And Casey will tell you how they went in there, used
12 the excavator, they dug this trench, they dumped the bags
13 that were in the trunk of the gold Buick, covered it over,
14 and then left.

15 Now, you're also going to see actual text messages were
16 taken from this defendant's phone at the time that the
17 burial occurred. He's trying to get ahold of Hall who's at
18 the burial site. And you will see this one there at
19 11:58 a.m.: Hey, what's going on.

20 And then finally at 12:33: Dude, I'm ready to leave.
21 I don't know what to tell you.

22 Now, you're going to hear that later on that afternoon
23 of Monday the 29th, that the gold Buick that was used to
24 transport the body -- containing the remains, was taken up
25 to that Sayers lot up in Lanesborough and there it was put

1 on the scale and sold to be crushed. You're going to see
2 photos -- surveillance photos at the wrecking yard of the
3 Defendant and Hall arriving in separate cars. Hall in the
4 gold Buick, this Defendant in a blue car.

5 Now, you're going to hear witnesses saying that that
6 gold Buick previously seemed to be in okay condition as late
7 as Sunday morning when the two young women took it up to
8 Peru to make breakfast.

9 The worker at Sayers will say, when it was turned in to
10 be scrapped, that there not only was no rear seat, but the
11 trunk had been striped down to bare metal, that it was
12 crushed, sent off to Rhode Island, but it was never
13 recovered by the police finding about it later.

14 And you're going to hear that later on that night, at
15 the clubhouse in Lee, that this Defendant and Hall are there
16 drinking. You will hear it was very unusual for Adam Hall
17 to drink. That while they're drinking they are celebrating
18 and they start to mimic and make fun of Glasser and the
19 other victims during course of the murder.

20 Hall running around mimicking: Help me. Help me.

21 And the Defendant holding up his hand like a gun to
22 shoot him and both laughing, talking about them clinking
23 glasses as if they are cheering each other about what
24 they've accomplished and about Hall making statements about
25 cutting and torturing the victims, about made him watch and

1 you should have seen the look on his face.

2 And two days later, trying to get rid of evidence,
3 because you will hear that on Wednesday after missing
4 persons report police converge on that apartment at 254
5 Linden Street and the whole neighborhood is abuzz.

6 Ocean Sutton who had started a relationship with the
7 Defendant, during the course of that week, just before and
8 just after the murders, will tell you she's with the
9 Defendant and Hall. They had spent the night at the Hells
10 Angels clubhouse. They went out for breakfast and Adam Hall
11 gets a phone call on that Wednesday.

12 They leave, they go back to the clubhouse, that the two
13 men burn some clothing there. And they are driving up to
14 Pittsfield and on the way they stop, and you're going to see
15 photos of this and you're going hear about this from
16 witnesses. They stop at the Memorial Bridge in Lenox Dale
17 and both the Defendant and Hall are seen throwing clothing
18 and a box. You will later hear from the Defendant telling
19 somebody else that also a gun kicked under the railing that
20 went into the river.

21 Those witnesses will tell about it and the Defendant
22 describing to somebody else they were throwing those away
23 because they were evidence involved in it that potentially
24 had evidence on the clothing and in fact Hall's shoes were
25 bloody. That's why he ends up buying some shoes later.

1 You're going to hear that a week after that, the
2 police, when they find out about this, go down to the river.
3 They do a search, and eventually they recover two pieces of
4 cardboard that are stuck on an island in the middle of the
5 river and the State Police Investigator, Trooper Carol
6 Zullo, will tell you she noticed markings from Walmart that
7 were on the pieces of box.

8 She goes to Walmart. Goes to the shoe department and
9 finds what appears to be identical boxes. They use that to
10 link it up. They go back and look and find the video. And
11 you're going to see the video from Monday evening the 29th
12 of the Defendant and Hall in Walmart coming in, making a
13 purchase of a new pair of boots and then the two of them
14 walking out and Hall actually wearing the new boots with
15 tags still on them and being stopped by the greater at the
16 door to make sure she sees the receipt.

17 You're going to learn, ladies and gentlemen, about what
18 happened to these three men and about their bodies, about
19 the excavation that was done when the site was discovered in
20 Becket, the 15 bags containing the remains and the clothing,
21 and how the bodies were cut up.

22 You'll hear testimony from the pathologist who
23 conducted the autopsy that David Glasser suffered three
24 gunshot wounds to the head and stab wounds -- one to the
25 leg, and stab wounds and blunt force injuries.

1 That Edward Frampton suffered four gunshot wounds, one
2 to the head, one to the shoulder, and one to each -- to both
3 arms and a large gaping slice in the upper back, and that he
4 was sliced up the middle from the groin all the way up to
5 the sternum.

6 And that Robert Chadwell, three gunshot wounds -- one
7 to the head, two the shoulder, also suffered stab wounds and
8 superficial cuts, fractured ribs, and gaping defect which
9 could not be determined whether it was from a gun shot or
10 being from some blunt object; but he too was sliced up the
11 middle.

12 Four bullets were recovered. One each from the heads
13 of the three men, one from the arm of Frampton, and all four
14 you're going to hear from testimony were consistent from
15 being a shot with a .45 caliber weapon. One of the weapons
16 that Steven Hinman will say that he saw, in fact Adam Hall
17 had when he arrived at his house.

18 You're going to hear, unable to get any fingerprints
19 off the bags that were used in the burial, but bags
20 consistent with those used in the burial were found in
21 Hall's residence in Peru, at the Lee clubhouse, the North
22 Adams Apartment that was used by Chalue; and that latex
23 gloves were found at the residence in Peru, Veiovis'
24 apartment, and the apartment in North Adams as well as the
25 clubhouse.

1 And at the clubhouse there was a cleaning kit which
2 appeared to have just been recently used for a .45 caliber
3 including implements that had been used to clean a .45
4 caliber weapon.

5 You're also going to hear evidence, ladies and
6 gentlemen, that during a search of Veiovis' apartment in
7 Pittsfield that on a wall was a collage made of
8 illustrations, anatomical types of illustrations, which
9 depicted dismemberment.

10 And I told you also about the cell phone analysis, an
11 FBI expert Special Agent Eric Perry, who's on their special
12 Cellular Analysis Survey Team will tell you about going over
13 the records showing the -- not only show calls about when
14 they happened, but also the cell towers that were used. And
15 doing an analysis of this, and also going out himself trying
16 to recreate will corroborate the description of Hall -- of
17 Hall stopping at Hinman's and then going up and meeting with
18 the others, and the others going directly up to Pittsfield
19 from the clubhouse, about Hall going over to meet with
20 Casey, and finally, about Hall being at the site of the
21 burial at the time the burial occurred.

22 Finally, to corroborate all of that testimony and
23 evidence and to assure that it will be very clear to you
24 about the defendant's participation in the kidnap and
25 murders, you will hear what he said to four fellow inmates.

1 All of them inmates with him while he's being held
2 awaiting trial, each recalling not just an admission, but
3 specific deals relating to this case.

4 First you will hear from Christopher Letalien who is
5 with the Defendant at Berkshire House of Correction shortly
6 after he's arrested in September of 2011. They appear to be
7 friendly, but Letalien will tell you the Defendant became
8 angry. That Letalien was making noise that might cause the
9 Defendant and Veiovis to lose some privileges they had as
10 special prisoners being held in Segregation Unit.

11 And when Letalien stops by his cell one day, the
12 Defendant says to him, Letalien is going to say: I'm not
13 going to fight you. Not only do I got three bodies, I made
14 them disappear. Not only did I make them disappear,
15 fourteen days later they found them cut up into pieces in
16 the bottom of a ditch.

17 And Letalien will describe his eyes got black, he
18 looked crazy and evil, and he was scared.

19 And you're going to hear from an officer who was in the
20 unit at the time, could see the fear in Letalien's face, and
21 went over to him right afterwards and said, What happened?
22 Letalien didn't want to talk about, didn't tell him, but
23 later explained what had happened and he will come in and
24 testify about that.

25 You will also hear from another inmate from that same

1 unit at around the same time by the name of Jason Lemieux.

2 He became more friendly with the Defendant and they
3 would talk from time to time and he will tell you how the
4 Defendant talked about the victims were tortured upon
5 torture and, quote, cut up alive, the others made to watch.
6 And then he talked about it in a bragging way and made a
7 joke about it. About how it was funny that Adam Hall's
8 cases fell apart and maybe we should send some bandages to
9 the DA to patch up his witnesses.

10 And he will corroborate that threat made to Chris
11 Letalien because he overheard it.

12 You're also going to hear from two inmates from State
13 Prison themselves serving serious sentences. First from
14 Jeffrey Cashman. He will tell you he knew the Defendant
15 through the Aryan Brotherhood. That he had been put up for
16 membership but had been told he couldn't become a member
17 because, supposedly, the Defendant had said no.

18 When the two of them were together, housed in the same
19 unit, he went up and introduced himself and asked about that
20 and why and that over time they talked and the Defendant
21 appeared to come to trust him and said yes, he would put him
22 up.

23 And eventually he said to him, Look, I want you to read
24 this, quote, novel that I have. And he has transported over
25 to Cashman's cell a package. And inside it is a 93-page

1 affidavit, written by one of the investigators of the case
2 which gives an overall about the investigation at that point
3 plus probable cause reports relating to the arrest. And he
4 says, I want you to read this because I want you to see who
5 the rats are in this case.

6 And Casey (sic) will describe it. He opened up and you
7 will be able to see from that, that next to a picture of
8 Adam Hall is the word "rat" with an arrow pointing at it.

9 Next to picture of David Casey is the word "rat" with
10 an arrow pointing at it.

11 And there's a lot of things, but inside the note --
12 inside the package were those materials, there's a note
13 written by the Defendant to Cashman which says: Jeff, check
14 out this novel on a bro's case. A quick, but enjoyable
15 read. Keep in mind the name of all of the rats in this
16 case. I'm sure they will all be making their way up this
17 way and, yes, they will all be in the hat. Listen, I'm
18 willing to reinstate you, but I first have to know without a
19 doubt, 100 percent, you're willing to give your life for
20 this thing, because once you're in, there's no way out.
21 That means making your bones when the times comes. Are you
22 willing to do that? If so, let me know.

23 And Cashman will explain that being "in the hat" means
24 being marked for death.

25 He will tell you that in addition to sending him that

1 note and letting him read that, showing him who the rats
2 were, Hall had told him he tried to intimidate the witness,
3 but he was unsuccessful and that the Defendant told Cashman
4 it was his idea eventually to tell Hall he's going to have
5 to get rid of him. They got rid of the evidence, washed out
6 one car, crushed another, that they threw the clothes and
7 the gun from the bridge, and they were worried about some of
8 the witnesses, and the Defendant was particularly worried
9 about the cell phone evidence.

10 You're also going to hear from a fourth inmate, Jethro
11 Kempton also a State Police -- State Prison inmate who knew
12 the Defendant as well through the Aryan Brotherhood. He
13 will tell you he was the one who actually had questions
14 about Cashman being put up for membership. He had received
15 a letter from the Defendant, which you'll see, identifying
16 himself about the business of the brotherhood and referring
17 to Cashman and one other man being on deck, about let's hold
18 him there, he shouldn't be in membership. And when the
19 Defendant and Kempton were housed together and they finally
20 did meet, that at that point the Defendant had been made
21 aware that Cashman was cooperating, and he told Kempton
22 about it, and made a point about he didn't want this guy in.
23 And that Cashman himself was now in the hat.

24 Now, Kempton will tell you he wasn't shown any reports,
25 but the Defendant did discuss with him specific details,

1 that it was disjointed, but there were bits and pieces.
2 That he used a .40 caliber gun with copper jacketed bullets,
3 that they let the bodies sit for awhile before cutting them
4 up so it wouldn't be all bloody; that one did run in the
5 woods, that he was shot and brought back and killed later;
6 They crushed one car because it contained evidence; that he
7 was concerned about the cell phone tracking evidence which
8 is part of the case at that point; and that he also says
9 that this fourth person, you will hear about this David
10 Casey, actually knew about it beforehand and he freaked out
11 when he learned about this burial didn't involve just one
12 but three of them. And he talked about how abusing the
13 witness, not just cutting him up, but abusing his body
14 afterwards, and saying, You rat on me now you F-ing rat.

15 And all four of them will talk about -- they are
16 cooperating. They are trying to do the right thing, but
17 they are scared and they expect protection as well as help
18 on cases that they have already had and in some instances
19 you will hear about them receiving help. Relocation, one of
20 them being released from a sentence to be relocated. And
21 they expect that in these cases, but that no other promises
22 have been made to them.

23 With all of that evidence, ladies and gentlemen, that
24 testimony, the physical evidence, statements the Defendant
25 himself has made about doing it and the details, all of that

1 together will make you comfortable that the Defendant is
2 guilty of all of the charges and you will return verdicts of
3 guilty.

4 Thank you.

5 THE COURT: Thank you, Mr. Capeless.

6 Mr. Frank, do you wish to make an opening?

7 MR. FRANK: I do. Thank you, Your Honor.

8 THE COURT: You may proceed.

9 **OPENING STATEMENT BY MR. FRANK**

10 MR. FRANK: Again, thank you, Your Honor. To the
11 District Attorney's office to Mr. Chalue ladies and
12 gentlemen, you've heard a lot of stories from the District
13 Attorney's Office but we have a journey ahead of us, a
14 four-week journey, that's what we anticipate for this trial.
15 I think for all of us, we're experiencing, to some degree,
16 it as interesting and other times we may feel it is somewhat
17 tedious, but think for all of us it will be transforming.
18 And it's transformative on a trial like this because the
19 charges are so serious. They're serious to everybody.
20 They're serious to you. They're serious to Mr. Chalue. And
21 we expect -- we look forward to presenting our defense
22 because much of what you've heard in this opening will not
23 be established.

24 I anticipate the trial will go somewhere along these
25 lines, the first part of the case you're going to hear about

1 Adam Hall. You're going to hear how he chased and harassed
2 David Glasser, it turns out for years. You're going to hear
3 how Adam Hall was a Hells Angels, a member of the Hells
4 Angels.

5 You're going to hear and you did hear, by the way in
6 the openings, some confusion David Chalue and Adam Hall on a
7 number of occasions as the prosecutor's opening at a time
8 when Mr. Chalue wasn't even around.

9 The second part of this case will be a set of
10 horrifying details about how the bodies of these three men
11 were found and how you can expect that they were treated
12 during the course of what must have been a terrible event.

13 You will hear the details, you'll see the pictures,
14 they will be disturbing. You've had an instruction or a
15 question about that from the Judge about the fact that
16 you're going to be looking at some pictures regarding the
17 details of this. That's just how disturbing they are. The
18 that -- those pictures are disturbing.

19 The third part of this case will be an excruciating
20 recitation of the details of the investigation, the
21 investigation in this case is massive; massive.

22 And here's what you'll learn -- excuse me, at the end
23 of these parts of the case.

24 You are going to learn that the Defendant David Chalue
25 occasionally hung out with Adam Hall. Other people hung out

1 with Adam Hall.

2 There are a lot of witnesses in this case who are going
3 to come forward who hung out with Adam Hall and they didn't
4 know Adam Hall -- excuse me -- they knew Adam Hall a lot
5 longer than the Defendant David Chalue. You will hear that
6 the Defendant David Chalue has no connection to any one of
7 these witnesses -- excuse me, victims.

8 You're going to learn that David Chalue is not a member
9 nor a prospect of the Hells Angels. You're going to learn
10 that David Chalue had the opportunity to flee, to leave the
11 Berkshire area where he'd only recently come. And you're
12 going to learn that he stayed.

13 You're going to learn that there is no direct forensic
14 evidence to support the Commonwealth's claims against David
15 Chalue and his association or lack of association with this
16 crime. There's no murder weapons. There's no murder scene.
17 There's no eyewitnesses. There's nothing objectively tying
18 the Defendant David Chalue to this crime.

19 Now, the District Attorney spent and returned to the
20 burial on a number of portions during his opening. So let
21 me talk about that as well because here's what the burial
22 establishes.

23 That when David Chalue had a chance to help, and should
24 have helped were he guilty, he did not. You're going to
25 learn that the Sunday after the killing, after the death or

1 perhaps the same day as the death, Adam Hall met
2 Commonwealth witness David Casey. David Chalue is not
3 there. They had a conversation where David Chalue -- excuse
4 me, where David Casey or Casey and Hall agree that Hall
5 would stash his car at the Pavoni property which is shown to
6 you. The bodies were in the trunk. You're going to learn
7 that Hall and Casey agreed to meet at Pavoni's the following
8 day to bury the bodies because Casey had an excavator parked
9 about five minutes away at a friend of his, Dan Cole. You
10 saw that property.

11 The next day, Mr. Hall met Mr. Casey at Pavoni's and
12 Chalue arrived at Pavoni's with Hall, but you're going to
13 learn he did exactly nothing.

14 You're going to hear that the evidence will show that
15 while at Pavoni's Mr. Hall took Mr. Casey aside and they
16 talked about the plan to bury the body (sic), that Mr. Hall
17 opened up the trunk to the Buick where the bodies were
18 stored, and Mr. Chalue was excluded from that.

19 You're going to hear that Hall and Casey drove to the
20 excavator site, Dan Cole's property, to make sure the
21 property owner, Mr. Cole was not home, was a reconnaissance.

22 You're going to learn that David Chalue was excluded
23 from that reconnaissance, was excluded from that ride.

24 He was having a cup of coffee at the Pavoni residence.

25 You're going to learn that after they did the

1 reconnaissance, Hall and Casey returned back to the Pavoni's
2 residence to pick up the car and the bodies and to drive
3 them to the excavation site.

4 You're going to learn that Mr. Chalue was excluded from
5 this as well.

6 Mr. Casey and Mr. Hall then proceeded to use the
7 excavator to bury the bodies that they took from the trunk
8 of the car. This took awhile. They had trouble starting
9 the excavator. They had trouble moving a big rock.

10 Mr. Chalue was excluded from this. And I understand
11 that the District Attorney referred to a lookout, and
12 appropriately so, because a lookout would have been very,
13 very helpful.

14 You will learn that my client, David Chalue, was not
15 acting as a lookout. He was at the Pavoni residence. And
16 then you see the text, by the way saying: Hey, dude, what's
17 happening?

18 Something along those lines.

19 I can't wait. I want to leave.

20 Something along those lines. Because he was stuck at
21 the Pavoni residence while Mr. Casey and Mr. Hall buried the
22 bodies.

23 The last part of the case is what happens after
24 Mr. Chalue is arrested. And I'm not going to go through
25 each one of the four so-called jailhouse informants that

1 have been referenced by the prosecutor. I'll just give a
2 taste.

3 Because we can see what happens when jailhouse inmates
4 see a potential for government handouts. They don't get
5 cash, they get something more valuable, they get their
6 freedom.

7 And when complete freedom is not available we will
8 examine what the government has to do in exchange for
9 testimony or has to offer in exchange for testimony against
10 David Chalue. You're going to see these prisoners
11 negotiating, needling and needling and manipulating to try
12 and get a deal and work something out, to get their freedom
13 and some of them, by the way, did succeed. That's the cost.
14 That's their payment.

15 We're going to examine each of those informants who
16 tried to make their deal with the government. Mr. Chalue as
17 one witness puts it, turns out to be the ace in the hole, as
18 far as his defense is concerned.

19 We will examine how unlikely it is that Mr. Chalue is
20 yelling confessions to a prisoner across a large jail area
21 populated not only with other inmates, but with a guard,
22 because he didn't have access to Mr. Chalue's cell.

23 We're going to examine how another inmate, Mr. Cashman,
24 referenced by the prosecutor, will admit that he read
25 Mr. Chalue's initial police report, an early police report

1 authored by one of the investigators in this matter. And
2 then we're going to hear how he pretended he heard those
3 same details from Mr. Chalue.

4 Except for, he runs into this problem, and we'll learn
5 this, the initial police report got all of the big so-called
6 facts wrong. According to the government's own
7 investigation. And Mr. Chalue would have had that
8 information at the time he would have been speaking to
9 Mr. Cashman.

10 The government will present a vast of Aryan Brotherhood
11 information that came after the defendant was arrested.
12 First of all, you have already sworn not to convict him on
13 that basis alone in the Court's questioning of you in order
14 to participate as a juror in this matter. You will see that
15 it sheds absolutely no light on Mr. Chalue's participation
16 in this crime. It may sound scary, it may sound concerning,
17 but you will see that it sheds no light.

18 We will come back at the end of this trial and ask that
19 you consider the jailhouse informants' desires to deal for
20 freedom and government handouts. We will ask you to
21 consider whether this makes the jailhouse informants more
22 credible or less credible or incredible.

23 Add at the end of the trial, you will be left to
24 consider all of the evidence in this case, and then we will
25 ask that you find Mr. Chalue not guilty because Mr. Chalue

1 is not guilty.

2 Thank you very much.

3 THE COURT: Thank you, Mr. Frank.

4 Ladies and gentlemen, we are going to take the
5 mid-morning recess. Please bear in mind my cautionary
6 instructions during the break and do not discuss the case
7 with one another. We will be back with you in 15 minutes
8 you are excused.

9 (The jury exited at 11:09 a.m.)

10 THE COURT: We are in recess.

11 (The Court exited at 11:09 a.m.)

12 (* * * * *)

13 (The Court entered at 11:32 a.m.)

14 (The defendant was present.)

15 THE COURT: Thank you. Be seated, please.

16 Bring the jury in, please.

17 Mr. Capeless if your first witness is not in the
18 courtroom. You may bring them in.

19 (Pause)

20 (The jury entered at 11:34 a.m.)

21 THE COURT: Mr. Capeless, you may call your first
22 witness.

23 MR. CAPELESS: Thank you, Your Honor.

24 Erin Forbush.

25 (Erin Forbush, sworn)

1 THE COURT: Good morning, ma'am.

2 THE WITNESS: Good morning.

3 THE COURT: If I could remind you to keep your voice up
4 so everyone can hear you and answer only the question put to
5 you, please.

6 THE WITNESS: Certainly.

7 THE COURT: You may proceed.

8 (Erin Forbush)

9 DIRECT EXAMINATION BY MR. CAPELESS:

10 Q. In a clear voice, will you please tell His Honor and
11 the members of the jury your name and please spell your last
12 name, please.

13 A. My name is Erin Forbush, F-O-R-B-U-S-H.

14 Q. What do you do for a living?

15 A. I work for a human service agency, ServiceNet in
16 Pittsfield, Mass.

17 Q. How long have you lived in Berkshire County?

18 A. All of my life, so 45 years.

19 Q. Can you tell the members of the jury what your
20 particular job is working for ServiceNet?

21 A. So my actual job title at ServiceNet is Director of
22 Operations, but really what that means is that I supervise
23 residential programming for individuals with developmental
24 disabilities. I also work in homeless shelters, supervise
25 the shelters in Berkshire County.

1 Q. How long have you been working for ServiceNet?

2 A. I've been working for ServiceNet going on over 12
3 years.

4 Q. Turning back to the Summer of 2011, what was your
5 position at that time?

6 A. My position at that time was Director of Operations,
7 primarily working with individuals with developmental
8 disabilities in an outreach residential setting.

9 Q. And did you have individual clients?

10 A. I did. I had a caseload, yes.

11 Q. And did you know a person by the name of Edward
12 Frampton?

13 A. Yes, I did.

14 Q. How did you know him?

15 A. Edward Frampton was one of our outreach clients. He
16 was on my caseload referred by the Department of
17 Developmental Services.

18 Q. And up to August of 2011, how long had he been your
19 client?

20 A. I had worked with him probably a little over three
21 years.

22 Q. And I show you that photograph, and I'm going to ask
23 you if you recognize that person?

24 A. Yes. That's Edward Frampton.

25 MR. CAPELESS: Your Honor, I'm going to ask that be

1 entered and marked as Exhibit Number 1.

2 MR. FRANK: No objection, Your Honor.

3 THE COURT: Admitted.

4 (Exhibit No. 1, photograph, marked)

5 Q. (By Mr. Capeless) Now, can you give a description to
6 the members of the jury about Edward Frampton and why he was
7 receiving services through you as a client of ServiceNet?

8 MR. FRANK: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: Sure. Edward was referred by the
11 Department of Developmental Services because he had received
12 services through the State, Department of Developmental
13 Services or previously Department of Mental Retardation,
14 since he was probably five years old. So he was part of
15 that system. And anybody that needs a little additional
16 assistance -- he did live independently, but he needed
17 additional assistance. He was referred to our outreach
18 program and that was where my role came into play, was to
19 help him live independently as he was able to do.

20 Q. (By Mr. Capeless) Were you aware, through your work, as
21 you worked with Mr. Frampton, about his history?

22 A. I was, yes.

23 Q. And can you tell the members of the jury how he had
24 spent his childhood?

25 MR. FRANK: Objection.

1 THE COURT: Sustained unless you can lay some
2 nonhearsay foundation.

3 Q. (By Mr. Capeless) Were you made aware of the record
4 related to Mr. Frampton?

5 A. I was.

6 Q. Was this important in working with him?

7 A. It provided a basis of understanding.

8 Q. Did you also discuss his childhood and his history with
9 him?

10 A. Yes. He wanted to talk about that history.

11 Q. Okay. Did you come to learn how he had spent his
12 childhood up until early adulthood?

13 A. I did. I was able to learn that he was somebody --

14 MR. FRANK: Objection.

15 THE COURT: Sustained.

16 Q. (By Mr. Capeless) Did Mr. Frampton work?

17 A. He would do little odd things, but he wasn't employed
18 during the time that I worked with him.

19 Q. Okay. What kinds of things did you do with
20 Mr. Frampton to help him?

21 A. Primarily I was there to support him to be able to
22 listen to him, talk to him. Medical appointments was
23 another big piece of what I did with Ed. So it was getting
24 him to doctor's appointments, making sure he was taking
25 medication he needed to take. Sometimes I would help him

1 with finances, you know. He was able to manage it, but
2 needed assistance at times -- grocery shopping. Anything
3 that you and I need, just a little support and additional
4 stuff just to continue to live the way that we wish to live.

5 Q. Over a course of a week, how often would you be in
6 direct contact with him?

7 A. I would see him a couple times a week and we would
8 probably talk on the phone a few more times than that. Ed
9 would have quite a bit of contact with me, so I saw Ed a
10 lot.

11 Q. And over the course of the years that you spent with
12 him, did you ever meet any family of his?

13 A. I was never able to meet any family. He really didn't
14 have --

15 MR. FRANK: Objection.

16 THE COURT: Overruled.

17 Q. (By Mr. Capeless) To your knowledge, did he have any
18 family?

19 A. To my knowledge he had a son, which he did not really
20 have much contact with. He had been married in the past and
21 his wife had since --

22 MR. FRANK: Objection. Objection.

23 THE COURT: Overruled.

24 THE WITNESS: His wife had since passed away. The son
25 was not from the marriage, but he had not -- he felt very

1 bad not seeing his son for years.

2 Q. (By Mr. Capeless) Now, where did he live?

3 A. Ed lived in Pittsfield on Linden Street.

4 Q. I'm going to show you this photograph.

5 Okay. I'm going to ask you if you recognize what is
6 depicted there.

7 A. That would be the apartment building that Ed lived in.

8 Q. Do you know the address?

9 A. 254 -- I want to guess 254-252 Linden Street.

10 MR. CAPELESS: I would asked that be entered and marked
11 as an exhibit, Your Honor.

12 MR. FRANK: If it could just be held up. I don't
13 believe there is an objection.

14 (Pause)

15 MR. FRANK: No objection. Thank you.

16 THE COURT: Without objection, it is admitted.

17 (Exhibit No. 2, photograph, marked)

18 Q. (By Mr. Capeless) Did he live there alone?

19 A. He did not. He had a roommate.

20 Q. Did you come to know the roommate?

21 A. I knew the roommate before I knew Ed.

22 Q. How did you know -- what was the roommate's name?

23 A. The roommate's name was David Glasser.

24 Q. How did you know him?

25 A. I knew David through my work at ServiceNet. David was

1 part of another outreach program contracted through the
2 Department of Mental Health, same type of program that Ed
3 was in, but funded by the Department of Mental Health
4 instead of the Department of Developmental Services.

5 Q. Was Edward Glasser still a client in August of 2011?

6 A. He was not a client of ServiceNet in that time period.

7 Q. I'm going to show you this photograph and ask you if
8 you recognize the person depicted there?

9 A. I do recognize him as David Glasser.

10 Q. Who is that?

11 A. David Glasser.

12 MR. CAPELESS: Your Honor, I am going to ask that be
13 entered and marked as Exhibit Number 3.

14 MR. FRANK: No objection, Your Honor.

15 THE COURT: Admitted.

16 (Exhibit Number 3, photograph, marked)

17 Q. (By Mr. Capeless) Now, during the course of time, can
18 you describe how often you would spend time with
19 Mr. Frampton? Did you spend time over at the apartment?

20 A. I did, yes.

21 Q. And when you would go over there, would it be for a few
22 minutes or would you spend more time than that?

23 A. Oftentimes I would spend more time than that. It could
24 be up to an hour, maybe a little more. Other times it was a
25 short visit.

1 Q. Did you come to see how the household operated between
2 the two of them?

3 A. I did, yes. I was very familiar.

4 Q. Can you describe that to members of the jury?

5 A. Sure. The household was the two of them. It was a
6 one-bedroom apartment. So Ed had really secured the
7 apartment, so Ed had the bedroom. The living room kind of
8 really was the living room but also David's room as well.

9 And Ed was definitely much more the
10 housekeeper/homemaker kind of individual. He took a lot of
11 pride in the belongings he had and how he set his house up.
12 Did the cooking, most of that kind of stuff.

13 Q. Were there occasions when you ate over?

14 A. There were occasions that Ed would certainly attempt to
15 feed me when I was there. Ed was a caretaker, so he cared
16 for me.

17 MR. FRANK: Objection.

18 THE COURT: Overruled.

19 Q. (By Mr. Capeless) Now, did you come to learn whether or
20 not Mr. Frampton had any physical or mental limitations --
21 not mental, but medical limitations?

22 A. He did. We were actually, during this time frame he
23 was really looking at trying to correct or deal with a lot
24 of the medical issues he had. So we had many appointments
25 scheduled for that.

1 Q. Including what?

2 A. One of the most troubling to him was some circulation
3 issues, so he wasn't able to walk as well. So he really
4 wanted to have that addressed, to just to maintain his
5 independence.

6 Q. Now, this issue relating circulation and walking, did
7 it effect what he did during the course of his day?

8 MR. FRANK: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: It did. It certainly limited what he was
11 able to do, where he was able to go on his own.

12 You know, he would depend on me to get him from rides
13 to the appointments, that kind of thing; and it caused pain
14 for him.

15 Q. (By Mr. Capeless) And did you come to know the kind of
16 routine that he normally had?

17 A. I did, yeah.

18 Q. Was he somebody who tended to go various places?

19 A. He was not able to. He didn't really go. He would
20 have liked to have gone places, but he wasn't doing that as
21 frequently.

22 Q. Did he own a vehicle?

23 A. No. Ed did not have a vehicle.

24 Q. Was there a vehicle in the household?

25 A. David owned a truck.

1 Q. And did you, over the course of the time that you would
2 spend over at the apartment, would you interact with David
3 Glasser as well as with Edward Frampton?

4 A. I would on occasion, yes.

5 Q. And can you describe to the members of the jury the
6 relationship Mr. Glasser had with that truck?

7 A. Oh, that was -- it was kind of his livelihood. That
8 truck meant everything to David. He used it to taxi
9 people --

10 MR. FRANK: Objection.

11 THE COURT: Sustained as to anything beyond what you
12 have already testified to.

13 Q. (By Mr. Capeless) Now, you described that neither
14 Edward Frampton nor David Glasser had formal employment?

15 A. Correct.

16 Q. Did you, as part of your job, become aware of whether
17 or not they also they obtained income from elsewhere?

18 A. Yeah. I would -- they would certainly tell me stories.
19 I knew other individuals in the community that would utilize
20 David for moving-- I would utilize as an outreach program
21 for moving.

22 Q. Did either of them have a formal source of money?

23 A. They were both receiving social security.

24 Q. Okay. And did you work with Edward Frampton at least
25 regarding his -- the funds that he would get?

1 A. At times I would, he would certainly ask me for
2 assistance.

3 Q. Did he have a routine about getting his check and what
4 he did with it?

5 A. Yes.

6 Q. What would happen?

7 A. The check would come on the first.

8 MR. FRANK: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: The check would come on the first and
11 third, because he would have two checks, a state check, a
12 federal check. And he was at the bank on those mornings.
13 He withdrew the money. You know, paid some bills, did what
14 he needed to do with it, but it was always first and third.
15 That's how he did it.

16 Q. (By Mr. Capeless) Now, over the course of the time that
17 you spent working with him, can you describe the kind of
18 relationship that you had with Edward Frampton?

19 A. I had -- it was a different relationship I had with Ed.
20 A lot of that was from just the way Ed felt about me. Ed
21 was somebody that really took a liking to me; would
22 oftentimes try to say, you know, We could have a perfect
23 life together. Kind of that girlfriend/boyfriend kind of
24 thing. You know, he would often call me to kind of say
25 thinking about you, leaving a voice mail, that kind of

1 thing.

2 So he pushed the boundaries, which is not the way you
3 want to do it professionally, but I was able to tolerate
4 that and remind him of that. We were able to have a good
5 relationship in that manner.

6 Q. How often would he call you?

7 A. I would probably -- I mean, there's probably six days
8 out of the week he made a phone call to me. And that
9 includes weekends, because he would leave a voice mail. So
10 I had voice mail, so I would always have my voice mails to
11 look forward to after a weekend.

12 Q. At least as far as there, did you come to know the
13 relative ages of the two?

14 A. Yes; relatively, yes.

15 Q. Relatively, can you tell the members of the jury?

16 A. Ed was in his late 50s. David was probably in his mid,
17 mid 40s.

18 Q. Were there any pets in the household?

19 A. There was a pet.

20 Q. And what was that?

21 A. The pet was a cat, that was Ed's cat Princess.

22 Q. Okay. Did you see the relationship that Ed had with
23 that cat, Mr. Frampton?

24 A. Oh, yes. That cat -- that cat meant everything to Ed.
25 You know, he made sure that cat was well taken care of.

1 Q. I'd like you to turn your attention back to the Summer
2 of 2011, specifically Friday, August 26. At that time were
3 you working with Ed Frampton?

4 A. Yes, I was.

5 Q. Did you happen to speak with him that day?

6 A. I did speak with him.

7 Q. How?

8 A. I spoke to him by phone at the end of the day.

9 Q. What was the -- what was the conversation about?

10 A. It was really just kind of recapping what we had done
11 that week and really making plans for the following week
12 because he had many medical appointments that we needed to
13 attend to.

14 Q. You told the members of the jury earlier that there
15 were issues, particular issues that Mr. Frampton was working
16 on at that time?

17 A. Uh-huh.

18 Q. Can you describe, at least particularly in that
19 conversation, how he expressed himself going forward and how
20 things seemed to be going for him?

21 MR. FRANK: Objection.

22 THE COURT: Are you offering this for its truth,
23 Mr. Capeless?

24 MR. CAPELESS: State of mind, Your Honor.

25 THE COURT: Is that your objection?

1 MR. FRANK: One of my objections. My other is
2 relevance.

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: Ed's state of mind was very positive. He
5 was really on a road to let's-take-care-of-himself. He
6 hadn't always done that and he really wanted to do that with
7 multiple types of doctors appointments.

8 Q. (By Mr. Capeless) Now, did you discuss appointments
9 that were coming up that following week, the week starting
10 on the 29th and going forward, Monday, the 29th going
11 forward?

12 A. Yes, because he had an appointment on Monday morning,
13 so I was making sure -- Friday is my last day of work, I
14 want to make sure that Monday is set up.

15 Q. Turning your attention to Monday morning, did you go to
16 work that day?

17 A. I did go to work that day.

18 Q. When you got there, can you tell the members of the
19 jury, was there any phone message from Mr. Frampton?

20 A. There was not, which was very unusual.

21 Q. Okay. Did you try to contact him?

22 A. I did start calling him that morning.

23 Q. About what time?

24 A. About 10 o'clock I called probably the first time.

25 Q. Why were you calling him?

1 A. I was calling him to remind him of the appointments and
2 set up a time on picking him up and that kind of thing.

3 Q. When you called, did you get an answer?

4 A. I did not get an answer.

5 Q. Okay. So what did you do?

6 A. I waited a little bit and I called again.

7 Q. Okay. Now, when you say you got no answer, when you
8 called, what happened?

9 A. His answering machine picked up.

10 Q. Okay. Did you leave a message?

11 A. I believe I did leave a message.

12 Q. Okay. The second time when you called, did you get an
13 answer then?

14 A. I did not get an answer.

15 Q. Okay. So what did you do?

16 A. Then I was slightly concerned. It wasn't typical for
17 me not to get an answer, and he had an appointment coming
18 up, so I decided to go to his apartment to see if he
19 overslept or that kind of thing.

20 Q. Tell the members of the jury when you arrived at the
21 apartment at 254 Linden Street what happened.

22 A. You know, I arrived there. I parked as I normally
23 would. The first thing that I noticed was that there's an
24 outside door to the building, and it's a storm door and a
25 regular door and they were both closed. And it was just

1 unusual to me because it was still nice, it was summer, it
2 was warm. Almost always the main door was open and the
3 screen door was the only thing that was there.

4 Q. So you -- just can you just explain to the members of
5 the jury when you proceed through that main door, what are
6 you coming into?

7 A. You're coming into a common hall, stairway.

8 Q. All right. And what's directly in front of you?

9 A. When you go right in, the stairway is right in front of
10 you.

11 Q. And what's to your right?

12 A. To the right is Ed's door, Ed and David's door to their
13 apartment.

14 Q. Did you go through into the door?

15 A. I did go through into the door.

16 Q. What did you do?

17 A. I knocked on Ed's door repeatedly. I checked -- I got
18 no answer, checked to see if it was unlocked. The door was
19 locked.

20 Q. Okay. Could you hear anything inside?

21 A. I could hear noise that sounded like a TV.

22 Q. So then what did you do when you got no answer?

23 A. You know, I stayed there for a minute to keep knocking
24 on the door and then went back outside and I walked around
25 to the other side of the house. And I assumed somebody was

1 home when I got there because there was -- David's truck was
2 still there, so typically if the truck was there so was
3 David.

4 Q. I'm going to show you this next photograph.

5 A. Okay.

6 Q. Do you recognize what's shown there?

7 A. Yes.

8 Q. Was that now a different view of the exterior from the
9 street of 254 Linden Street?

10 A. Yes, that's a different view and you can see David's
11 truck in that view.

12 Q. And this next photograph, what is that a close-up view
13 of?

14 A. Of David Glasser's truck.

15 MR. CAPELESS: Your Honor, I'm going to ask these be
16 entered and marked as Exhibits 4 and 5.

17 THE COURT: Any objection?

18 MR. FRANK: If I could just be shown them, I don't
19 think so.

20 No objection.

21 THE COURT: Admitted.

22 (Exhibit No. 4, photograph, marked)

23 (Exhibit No. 5, photograph, marked)

24 Q. (By Mr. Capeless) At least as shown as on the screen
25 there, can you see only a portion of the truck?

1 A. Yes.

2 Q. And that is now a close-up?

3 A. Yes.

4 Q. And as you proceeded by the truck, where did you go to?

5 A. I went to the back of the house. It was a back porch
6 on the house, so I went to see if -- one, I went to see if
7 there was anyone out in the back and then I checked the door
8 on the back of the house.

9 Q. And what did you find?

10 A. I found that there was, like, a little piece of paper
11 in the door and I knocked again and I couldn't see anything
12 through the windows and I couldn't hear anymore than what I
13 had already heard.

14 Q. I'm going to show you this photograph. What is
15 depicted there?

16 A. That's the back of the house.

17 Q. And this photograph, is that a more close-up view of
18 the rear?

19 A. Yes. Yes.

20 Q. And, finally, this third photograph. What does that
21 show?

22 A. Of the back door itself.

23 Q. Okay.

24 MR. CAPELESS: Your Honor, I'm going to ask that these
25 three paragraphs be entered and marked as Exhibits 6, 7, and

1 8.

2 THE COURT: Any objection?

3 MR. CAPELESS: As they are identified.

4 MR. FRANK: No objection.

5 THE COURT: Admitted.

6 (Exhibit No. 6, photograph, marked)

7 (Exhibit No. 7, photograph, marked)

8 (Exhibit No. 8, photograph, marked)

9 Q. (By Mr. Capeless) Showing you Exhibit 6.

10 A. Yes.

11 Q. Exhibit 7?

12 A. Yup.

13 Q. And then Exhibit 8?

14 A. Yes.

15 Q. Now, you described earlier you saw something in the
16 door. Was it after you opened it up?

17 A. I opened the screen door, that's what I knocked on.

18 Q. What is it you --

19 A. It was a piece of white tissue paper.

20 Q. I'm going to show you that photograph. Does that show
21 that tissue?

22 A. Slightly, but not any -- the tissue was really there
23 just kind of jammed or wedged between the door jamb.

24 Q. This next photograph, is that a more close-up view?

25 A. Yes, it is.

1 Q. And finally, that third photograph, is that a close-up
2 of -- showing what it looked like?

3 A. Correct.

4 MR. CAPELESS: Your Honor, I'm going to ask that these
5 be entered and marked as Exhibits 9, 10, and 11.

6 THE COURT: Any objection?

7 MR. FRANK: No objection.

8 THE COURT: Admitted.

9 MR. FRANK: We do need to be shown them for our own
10 record keeping. We don't know which order.

11 THE COURT: Had you seen them before?

12 MR. FRANK: I have seen them.

13 I have no objection, but because I don't know which
14 order they are being entered --

15 THE COURT: We will try to accommodate your request.

16 MR. FRANK: Thank you.

17 (Exhibit No. 9, photograph, marked)

18 (Exhibit No. 10, photograph, marked)

19 (Exhibit No. 11, photograph, marked)

20 Q. (By Mr. Capeless) This is Exhibit 9?

21 A. Yes.

22 Q. Exhibit 10?

23 A. Yes.

24 Q. Exhibit 11?

25 A. Yes.

1 Q. Can you tell the members of the jury had you seen
2 something like that before?

3 A. I had not seen it before, I had only heard that that's
4 what Ed would do occasionally to make sure no one was coming
5 in.

6 Q. Okay. Now, did you go into the apartment?

7 A. On that occasion I did not. I went back to the
8 apartment with a co-worker.

9 Q. Okay. So after you had -- when you had gone there,
10 you'd open up and you saw the doorway that way --

11 A. Uh-huh.

12 Q. -- did you do anything? Did you call out?

13 A. I -- I probably didn't really call out. I probably was
14 just knocking and banging on the windows and looking through
15 the windows to see if I could see anything.

16 Q. Did you see or hear anything?

17 A. I didn't see or hear anybody.

18 Q. So you went back in the office?

19 A. Correct.

20 Q. And who did you meet with back there?

21 A. My co-worker Heather Ethier.

22 Q. Did you talk with her about the situation?

23 A. I did. I let her know what I had done, the phone
24 calls, that kind of thing, and then we decided to go back up
25 there.

1 Q. Okay. Did you go back?

2 A. We did.

3 Q. It's now approximately what time on Monday?

4 A. It's probably about one o'clock or so.

5 Q. Okay.

6 A. Early afternoon.

7 Q. Now, when the two of you got back there at one o'clock,
8 what did you do?

9 A. We started, again, going to the front door. Still
10 nothing. Went around the back of the house.

11 I had known that Ed, in the past, had locked himself
12 out of the apartment and he would use the bathroom window to
13 gain access, so with that information we were in the back,
14 the bathroom window is in the back of the house next to the
15 back door. So while I was kind of poking around, looking in
16 the glass on the door, knocking, Heather was trying to kind
17 of see if we could get the window out of the bathroom.

18 While she was doing that, I realized that the door was
19 actually unlocked and was able to then gain access through
20 the door.

21 Q. Okay. And did you go into the apartment?

22 A. We went into the apartment building.

23 Q. What's the first room you come into?

24 A. First room when you walk into the apartment from the
25 back is the kitchen.

1 Q. Showing you that photograph, what does that depict?

2 A. That would be the kitchen in the apartment.

3 Q. Is that how it looked when you went in there that day?

4 A. Yes.

5 Q. This next photograph, is that another photograph just a
6 different view?

7 A. It's just a different view, more of the table, the
8 kitchen table in that kitchen.

9 MR. CAPELESS: Your Honor, I'm going to ask these two
10 be entered and marked as Exhibits 12 and 13.

11 THE COURT: Any objection?

12 MR. FRANK: No objection.

13 (Exhibit No. 12, photograph, marked)

14 (Exhibit No. 13, photograph, marked)

15 Q. (By Mr. Capeless) Is that Exhibit 12?

16 A. Correct.

17 Q. And then Exhibit 13?

18 A. Correct.

19 Q. Now, in Exhibit 13, on the right-hand side there, what
20 can you see in that cabinet?

21 A. There are what we call pill planners and medication,
22 the boxes of medication, bottles, and then the front there,
23 the pill planners.

24 Q. And who are these prescriptions for?

25 A. They are probably both for David and Ed on that side.

1 That's where they kept their medications.

2 Q. Showing you that photograph, is that a close-up view of
3 the cabinet?

4 A. It is a much closer view.

5 Q. And is that how it looked --

6 A. It is how it looked.

7 Q. -- that now afternoon?

8 A. On that day I went, yes.

9 MR. CAPELESS: I'm going to ask that this be entered
10 and marked as Exhibit 14.

11 MR. FRANK: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 14, photograph, marked)

14 Q. (By Mr. Capeless) Does that show the pill planner
15 there?

16 A. Yes.

17 Q. Now, did you move from the kitchen to other rooms?

18 A. We did. I -- you can see -- you can, from the kitchen,
19 you can see the bedroom and the bathroom. I did walk
20 further into the living room, which is the room right after
21 the kitchen and from there, kind of looked around to see if
22 there was anything out of place.

23 Q. Did you notice anything when you got into the living
24 room?

25 A. Nothing other than the TV being on. It looked like it

1 would normally look when I would be there.

2 Q. Did you hear or see anybody?

3 A. Nobody was there.

4 Q. I show you that photograph. Do you recognize what room
5 that is?

6 A. That's -- this would be the living room.

7 Q. And what is shown directly in the middle of the
8 photograph?

9 A. The TV.

10 Q. Okay. Does it show the television on?

11 A. It is. It's currently on.

12 Q. Is that the way you saw it when went in there?

13 A. Yes. Yes, the TV was on.

14 MR. CAPELESS: Your Honor, I'm going to ask that be
15 entered and marked as Exhibit 15.

16 MR. FRANK: I would be object to this, if we could go
17 sidebar please?

18 THE COURT: You may.

19 (End of Sidebar Discussion)

20 THE COURT: Your objection?

21 MR. FRANK: Your Honor, the -- I object to the picture
22 that's on the frame inside the TV, what's being shown there.
23 Is think it's unduly prejudicial, unnecessary. They have
24 multiple pictures of the same scene and there is no reason
25 to put that in.

1 THE COURT: Well, the record should reflect it appears
2 to be a -- on the TV, a picture of a man laying face down.
3 It's difficult to tell beyond that what exactly it is.

4 Mr. Capeless.

5 MR. CAPELESS: It's what was on the television when
6 they took the photograph. It has nothing to do with the
7 case in a sense.

8 THE COURT: I find the relevance, that it is relevant
9 that the television was on, what was on the TV is not so
10 prejudicial as to outweighs its probative effect.

11 The objection is overruled.

12 (End of Sidebar Discussion)

13 THE COURT: Admitted. Just to make a record, it is
14 admitted.

15 (Exhibit No. 15, photograph, marked)

16 Q. (By Mr. Capeless) Is that Exhibit 15 I just showed you?

17 A. Yes.

18 Q. That shows what was on the screen?

19 A. That shows the TV was on in the living room.

20 Q. It may not be what you actually saw?

21 A. No, that is probably not what I saw.

22 Q. Okay. Now you described a living arrangement earlier.
23 You said that Mr. Frampton had a bedroom?

24 A. Yes.

25 Q. And where did David Glasser sleep?

1 A. In the living room.

2 Q. Showing you this photograph, what does that show?

3 A. That is the living room and the couch in the living
4 room which also doubled as a bed for David.

5 Q. Is that the way it looked that afternoon?

6 A. Yes.

7 MR. CAPELESS: Your Honor, I'm going to ask that be
8 entered and marked as Exhibit 16.

9 MR. FRANK: No objection.

10 THE COURT: Admitted.

11 (Exhibit No. 16, photograph, marked)

12 Q. (By Mr. Capeless) Does that show Exhibit 16?

13 A. Yes.

14 Q. Showing you this photograph, do you recognize what's
15 shown there?

16 A. Yes.

17 Q. Is that also another photo of the paragraph?

18 A. That is another photo of David and Ed's apartment and
19 it's the room that's off of the living room which Ed had
20 always called the computer room, so it's kind of an alcove
21 off of the living room.

22 Q. If you come into the kitchen, okay, and then turn into
23 the living room --

24 A. Yes.

25 Q. Where would the alcove be?

1 A. The alcove would be to my left; yes, thank you.

2 Q. Is that the way it looked on that afternoon?

3 A. Yes.

4 MR. CAPELESS: I'm going to ask that be entered and
5 marked as Exhibit 17, Your Honor.

6 THE COURT: No objection.

7 Admitted.

8 (Exhibit No. 17, photograph, marked)

9 Q. (By Mr. Capeless) Does that show 17 in the alcove?

10 A. Yes.

11 Q. What is there on top of the desk?

12 A. Computer monitor.

13 Q. I'm going to show you several photographs. First, do
14 you recognize what area of the apartment that is in?

15 A. That picture was taken from the computer room, alcove
16 into Ed's bedroom.

17 Q. Okay. Great. And this next photograph, is that a more
18 close-up view?

19 A. Of the bedroom, yes.

20 Q. And then, finally, this third photograph. What does
21 that show?

22 A. The closet that's in the bedroom.

23 Q. Do all three of those depict how those locations looked
24 that afternoon?

25 A. Yes, they did.

1 MR. CAPELESS: Your Honor, I'm going to ask that these
2 three, in the order in which they're identified, be entered
3 and marked as Exhibits 18 and 19 and 20.

4 MR. FRANK: No objection.

5 THE COURT: Admitted.

6 (Exhibit No. 18, photograph, marked)

7 (Exhibit No. 19, photograph, marked)

8 (Exhibit No. 20, photograph, marked)

9 Q. (By Mr. Capeless) And this is 18?

10 A. Yes.

11 Q. Exhibit 19?

12 A. Yes.

13 Q. And Exhibit 20?

14 A. Correct.

15 Q. Going back to Exhibit 19, first off, in general, when
16 you saw the condition of the apartment, did it look any
17 different from other times that you had been there?

18 A. No. For that time of day, didn't look any different.

19 And I say that time of day because the bed is made, so
20 typically -- Ed would typically sleep in the evening, get
21 up, make his bed, do whatever kind of tidying up of his
22 house, but that would be the way he keeps his apartment.

23 Q. Okay. And, on the lower shelf there --

24 A. Yes.

25 Q. -- what do you notice there?

1 A. Ed's cowboy boots.

2 Q. Okay. Did he often wear his cowboy boots?

3 A. He wouldn't often, but he would wear them for special
4 occasions or to impress somebody such as myself. He would
5 have the whole kind of cowboy shirt, boots, the whole kind
6 of thing -- hat.

7 Q. Did you notice anything out of place in the apartment?

8 A. Ultimately other than them not being there, there was
9 nothing really out of place.

10 Q. I'm going to show you that photograph. Do you
11 recognize what's depicted there?

12 A. I do. It's a calendar.

13 Q. Did you notice that calendar when you went into the
14 apartment?

15 A. I didn't. I wasn't looking for the calendar. I was
16 really looking for them or his cat actually. That is what I
17 was looking for. I wasn't looking at that time for that.

18 Q. Okay. How long did you and Ms. Ethier spend at the
19 apartment at that time?

20 A. Probably about fifteen minutes.

21 Q. What did you do after?

22 A. After we went back to the office, I continued to make
23 some phone calls, you know, trying to figure out where they
24 might be. We did see a neighbor in the neighborhood that we
25 knew from our work that said that they were looking for Ed

1 too and they hadn't seen him. But we just kind of took it
2 as that day, maybe they were helping with storm cleanup.
3 That was kind of our thought.

4 Q. Okay. The following day on Tuesday, did you try to
5 contact Mr. Frampton?

6 A. Yes.

7 Q. Were you able to contact him?

8 A. I was not able to contact him. I had no phone messages
9 and when I went to his apartment myself, I found the same
10 thing that I had found the day before.

11 Q. Did you continue to try to contact him?

12 A. I did.

13 Q. Did you go back to the apartment now on Tuesday?

14 A. I did go back to the apartment.

15 Q. When did you go back the second time?

16 A. Probably mid day.

17 Q. And when you went back those times, can you tell us did
18 you hear anything?

19 A. The same thing as the TV was the only thing that I was
20 hearing.

21 Q. All right. But did you see or hear any people?

22 A. No.

23 Q. Did you speak with anybody at work about it?

24 A. I did. My supervisor was aware of it. On that day, I
25 also made the service coordinator through the Department of

1 Developmental Services aware of what I wasn't finding, to
2 see if he had heard anything.

3 Q. Did you -- you testified earlier that Mr. Frampton had
4 medical appointments. Did you contact those offices to see
5 if he had shown up?

6 A. I didn't contact those offices only because I just --
7 he would have gone with me, so I knew he wasn't there. And
8 they were calling my office to reschedule things, so --

9 Q. Okay. Now, finally, on Thursday, had you heard from
10 him?

11 A. No.

12 Q. Had you been able to make any contact with
13 Mr. Frampton?

14 A. No, not at all.

15 Q. Did anybody go back to the apartment?

16 A. Probably as of Wednesday we did not go back to the
17 apartment. On Wednesday was the day that I filed the
18 missing person's report.

19 Q. And when you did, do you remember speaking to the
20 police about what you had learned or not learned?

21 A. I do recall that. I'd actually tried talking to the
22 police the first time, or I did talk to the police the first
23 time on Tuesday and I was really going there just to find
24 out if something had happened and they were possibly
25 incarcerated from the weekend. And on Tuesday the police

1 department was able to tell me they weren't --

2 MR. FRANK: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: -- that they weren't there and then on
5 Wednesday went back to make the missing persons.

6 Q. (By Mr. Capeless) Besides Mr. Frampton did you mention
7 to the police about Mr. Glasser?

8 A. I did. On Tuesday I mentioned both of their names and
9 then I was much stronger about it on Wednesday when I went
10 back.

11 Q. Okay. Can you tell the members of the jury, you said
12 you were much stronger about mentioning Mr. Glasser. Why
13 was that?

14 A. I was aware of other legal issues that Mr. Glasser had.
15 I was aware that he was a witness in a --

16 MR. FRANK: Objection.

17 THE COURT: Sustained.

18 Q. (By Mr. Capeless) Now, on Wednesday, what did you
19 formally do?

20 A. I formally made two missing person reports out, one for
21 Ed and one for David.

22 MR. CAPELESS: I have no other questions. Thank you.

23 THE COURT: Mr. Frank, you may cross-examine.

24 MR. FRANK: No questions, Your Honor.

25 THE COURT: Thank you, ma'am. You are excused.

1 THE WITNESS: Thank you.

2 (The witness stepped down.)

3 THE COURT: You may call your next witness, please.

4 MR. CAPELESS: Heather Ethier, please.

5 (Heather Ethier, sworn)

6 THE COURT: Good morning, ma'am.

7 THE WITNESS: Good morning.

8 THE COURT: If I could remind you to focus on the
9 question. Answer only the question put to you, please.

10 THE WITNESS: Yes.

11 THE COURT: And keep your voice up.

12 (Heather Ethier)

13 **DIRECT EXAMINATION BY MR. CAPELESS:**

14 Q. Please tell His Honor, the members of the jury, your
15 name and please spell your last name.

16 A. Heather Ethier, E-T-H-I-E-R.

17 Q. Where do you live?

18 A. I live in Adams, Massachusetts.

19 Q. All right. How long you have lived in Berkshire
20 County?

21 A. I've lived here for all of my life 28 years.

22 Q. What do you presently do for work?

23 A. I currently work at Greylock Animal Hospital.

24 Q. Okay. Turning your attention back to August of 2011,
25 where were you working then?

1 A. I was working at ServiceNet.

2 Q. Okay. And at that time, about how long had you been
3 working there?

4 A. Fourteen years.

5 Q. All right. Were you a co-worker with Erin Forbush who
6 had preceded you as a witness?

7 A. Yes, I was.

8 Q. Now, in your work at the ServiceNet, did you become
9 familiar with a person by the name of Edward Frampton?

10 A. Yes, I --

11 Q. How did you know him?

12 A. He was Erin's client, but when she was out of the
13 office or had things to do, I would also take care of him.

14 Q. And as a result of that, did you have occasion,
15 yourself, to speak to him on the phone much?

16 A. Yes, many occasions.

17 Q. Okay. Did Ms. Forbush discuss him with you?

18 A. Yes.

19 Q. Besides Mr. Frampton, did you become familiar with or
20 know his roommate David Glasser?

21 A. I did, yes.

22 Q. How did you know him?

23 A. David was also one of our clients when we were Meridian
24 prior to ServiceNet taking over.

25 Q. Just showing you what's been marked as Exhibit No. 1,

1 do you recognize who that is?

2 A. Yes.

3 Q. And who's that?

4 A. That is Ed.

5 Q. And do you recognize, this is Exhibit Number 3. Do you
6 recognize who that is?

7 A. That's David.

8 Q. Now, on Monday, August 29 of 2011, did Ms. Forbush
9 discuss with you, situation regarding Mr. Frampton?

10 A. Yes, she did.

11 Q. What did that involve?

12 A. Well, Ed had a lot of appointments coming up that week
13 and she hadn't heard anything from Ed over the weekend and
14 that was unlike him because he would always followup and
15 find out what time she was going to be picking him up and
16 plan the week.

17 Q. Did she talk to you about this over the course of the
18 day?

19 A. Yes, she did.

20 Q. Now, on Tuesday, the 30th, was this still a topic of
21 conversation between the two of you?

22 A. Yes, it was.

23 Q. Okay. And at this point on Tuesday, did the two of you
24 do something?

25 A. Yes, we did.

1 Q. What did you do?

2 A. Went to the apartment.

3 Q. Okay. And when you got there, what did you find?

4 A. Well, we had gone to the front door, and the screen
5 door was there and then we entered the screen door and
6 walked into the hallway which led to the living room, that
7 door was locked and we couldn't get in. We heard the TV on,
8 but nobody would answer. We would knock and knock. So then
9 went around to the side and went to the back door and tried
10 to get in that way.

11 Q. Did you get in?

12 A. We did, to do a wellness check.

13 Q. All right. Did you find any people in the apartment?

14 A. No, we did not.

15 Q. Had you been to the apartment before?

16 A. Yes.

17 Q. How many occasions?

18 A. Oh, I -- many occasions. I would help Ed with his
19 medication.

20 Q. Can you tell the members of the jury, did it seem any
21 different from other occasions you had been there?

22 A. No. It was just that there was dishes in the sink and
23 Ed usually was a relatively clean -- they were both
24 relatively clean and they'd also left the cat and that was
25 Ed's baby.

1 Q. Okay. Did you notice -- did you take notice of
2 anything, in particular, the appliances there?

3 A. Not at that time, not the appliances, no.

4 Q. Turning your attention to the living room --

5 A. Yes.

6 Q. -- what, if anything, did you notice about the living
7 room?

8 A. I noticed in the living room there was a cushion on the
9 floor next to the computer and also I noticed a wallet on
10 the computer, because that's where Ed would spend a lot of
11 his time. And I opened it up and that was Ed's wallet, but
12 it just seemed out of place, the cushion on the floor.

13 Q. Okay. I'm going to show you this photograph, and ask
14 you if you recognize what's depicted there?

15 A. It's a calendar.

16 Q. Did you notice the calendar when you went in that
17 Tuesday?

18 A. I don't.

19 Q. Do you recall if you saw it subsequent to that?

20 A. I did, yes.

21 Q. And what did you notice about the calendar?

22 A. That he hadn't marked off any -- like that was the last
23 day that he marked off was that Saturday and he was always
24 good about marking it off.

25 MR. FRANK: Objection.

1 THE COURT: Overruled.

2 Q. (By Mr. Capeless) Well, had you noticed somebody in the
3 household typically marking that off?

4 A. Yes.

5 Q. Who did that?

6 A. Ed.

7 Q. And the last day marked off on that calender?

8 A. Was Saturday.

9 Q. To your recollection, this calendar was located where?

10 A. In the kitchen.

11 MR. CAPELESS: Your Honor, I ask that this be entered
12 and marked as Exhibit 21.

13 MR. FRANK: No objection.

14 THE COURT: Admitted.

15 (Exhibit No. 21, photograph, marked)

16 Q. (By Mr. Capeless) You also mentioned -- I'm going to
17 show you this photograph. You recognize what's depicted
18 there?

19 A. Yes.

20 Q. What is that?

21 A. That's the front door of the apartment.

22 Q. And is this the outer door that you referred to that
23 goes in -- you then go inside?

24 A. Yes, it is.

25 Q. And can you see through the bottom pane what's directly

1 in front of you after you enter through the door?

2 A. Stairs.

3 MR. CAPELESS: Your Honor, I'm going to ask this be
4 entered and marked as Exhibit 22.

5 MR. FRANK: No, objection.

6 THE COURT: Admitted.

7 (Exhibit No. 22, photograph, marked)

8 Q. (By Mr. Capeless) Now, showing you that photograph, do
9 you recognize -- first off, is that an area in the living
10 room as it appeared when you went in on the Tuesday?

11 A. Yes, it is.

12 Q. Now, sir, and what in particular did you note there?

13 A. That there was a cushion on the floor and I just was
14 wondering who was staying there with them because it was
15 never there in the past.

16 MR. CAPELESS: Your Honor, I'm going to ask that be
17 entered and marked as Exhibit 23.

18 THE COURT: Any objection?

19 MR. FRANK: No objection.

20 THE COURT: Admitted.

21 (Exhibit No. 23, photograph, marked)

22 Q. (By Mr. Capeless) And on the screen now does that show
23 Exhibit 23?

24 A. Yes, it does.

25 Q. And where is the cushion that you're referring to?

1 A. It is on the floor.

2 Q. Okay. And what's on top of it?

3 A. Blanket.

4 Q. Okay. Now, showing you first this photograph.

5 A. Yes.

6 Q. Do you recognize what that is?

7 A. Yes.

8 Q. What's that?

9 A. That's Ed's wallet.

10 Q. And does that photograph appear to show Ed's wallet as
11 you saw it there on Tuesday?

12 A. Yes, it does.

13 Q. Okay. And then this next photograph, do you recognize
14 what's shown there?

15 A. Yes. That's Ed's bus pass, his transportation pass.

16 Q. Inside what?

17 A. His wallet.

18 Q. All right. Opened up?

19 A. Yes.

20 MR. CAPELESS: Your Honor, I'm going to ask that those
21 two be entered and marked as Exhibits 24 and 25.

22 MR. FRANK: No objection.

23 THE COURT: Admitted.

24 (Exhibit No. 24, photograph, marked)

25 (Exhibit No. 25, photograph, marked)

1 MR. CAPELESS: Can we have the lights just for a
2 moment.

3 This is very dark.

4 Q. (By Mr. Capeless) Can you see the wallet there?

5 A. Yes.

6 Q. What symbol is on the top of it?

7 A. It's a star.

8 Q. And is this what you are referring to as his
9 transportation pass?

10 A. Yes.

11 MR. CAPELESS: Thank you.

12 Q. (By Mr. Capeless) Now, when you went over there on
13 Tuesday and went -- you said you couldn't get in front, so
14 you went around to back. As you went around the side, what
15 did you notice on the side?

16 A. Ed's -- I'm sorry, David's truck.

17 Q. Did you check the condition of it?

18 A. I did. It was locked and I also looked inside and
19 nothing was out of place. There was some belongings in
20 there, just some things in there.

21 Q. Now, the following day, Wednesday, this is now the
22 31st, did you go back to the house?

23 A. I did. I went by myself.

24 Q. And when was this?

25 A. It was in the morning.

1 Q. Okay. Any answer this time?

2 A. No.

3 Q. Could you still hear the TV?

4 A. I could.

5 Q. Did you see the cat?

6 A. I did.

7 Q. Okay. Did you do anything for the cat?

8 A. I fed it and gave it some water.

9 Q. Okay. Did you happen to notice anything particular in
10 the kitchen regarding prescriptions?

11 A. All of Ed's meds were still there because I was --
12 didn't know what was going on and curious to see if Ed had
13 at least taken some medication in the meantime?

14 MR. FRANK: Objection, nonresponsive.

15 THE COURT: Sustained.

16 Q. (By Mr. Capeless) Well, what did you notice about the
17 daily medication containers that were still there?

18 A. It was still there and everything was left where it
19 was. He hadn't touched anything.

20 Q. Eventually, what did you and Ms. Forbush do regarding
21 what you had learned?

22 A. I had gone back to the office after I left his
23 apartment and we then reported the two of them missing.

24 I just wanted to verify that morning that we still
25 hadn't seen them, so then went back and we then reported

1 them missing.

2 MR. CAPELESS: Okay. Thank you. I have no other
3 questions, Judge.

4 THE COURT: Mr. Frank, cross-examination.

5 MR. FRANK: No questions.

6 THE COURT: Ms. Ethier, you are excused. Thank you.

7 THE WITNESS: Thank you.

8 (The witness stepped down.)

9 THE COURT: You may call your next witness.

10 MR. CAPELESS: Thank you, Ms. Ethier.

11 Lester Chadwell.

12 (Lester Chadwell, sworn)

13 THE COURT: Good afternoon, Mr. Chadwell.

14 THE WITNESS: Good afternoon.

15 THE COURT: If I could remind you to speak up so we can
16 all hear you and answer only the question put to you,
17 please.

18 You may proceed.

19 (Lester Chadwell)

20 **DIRECT EXAMINATION BY MR. CAPELESS**

21 Q. In a clear voice, can you please tell the members of
22 the jury your name?

23 A. Lester Arthur Chadwell.

24 Q. Mr. Caldwell, how old are you?

25 A. Fifty-seven.

1 Q. Where do you live?

2 A. 247 Linden Street in Pittsfield.

3 Q. How long have you lived in Pittsfield?

4 A. Practically all of my life.

5 Q. Okay. How long have you lived at an address in Linden
6 Street?

7 A. About 15 years.

8 Q. Did you have a brother named Robert?

9 A. Yes.

10 Q. And where is Robert in relationship to you, younger or
11 older brother?

12 A. Younger.

13 Q. Okay. And showing you this photograph, I ask you if
14 you recognize who that is?

15 A. Yes.

16 Q. Who's that?

17 A. Robert.

18 MR. CAPELESS: Your Honor, I'm going to ask that be
19 entered and marked as Exhibit Number 34.

20 MR. FRANK: No objection.

21 THE COURT: Admitted.

22 MR. CACCAVIELLO: Twenty-six.

23 MR. CAPELESS: What is next?

24 THE CLERK: Twenty-six.

25 (Exhibit No. 26, photograph, marked)

1 Q. (By Mr. Capeless) Did you come to know a friend of
2 Robert's by the name of Willie Haywood?

3 A. Yes.

4 Q. And how long did you know Willie Haywood?

5 A. My whole life.

6 Q. Okay. And what kind of relationship did he have with
7 your brother Robert?

8 A. They were close.

9 Q. Okay. I'm going to show you this photograph. Do you
10 recognize who's shown there?

11 A. Yes, Willie and Robert.

12 Q. Okay. And Willie is shown on which side?

13 A. On my left.

14 Q. Okay. And he's got which color shovel?

15 A. Red.

16 MR. CAPELESS: Your Honor, I'm going to ask this be
17 entered and marked as Exhibit 27.

18 THE COURT: Any objection?

19 MR. FRANK: No objection.

20 THE COURT: Admitted.

21 (Exhibit No. 27, photograph, marked)

22 Q. (By Mr. Capeless) Now, looking at the screen, does that
23 show, Exhibit 26, the photo of your brother?

24 A. Yes.

25 Q. And does this now show Exhibit Number 27 showing your

1 brother Robert on the right and Willie Haywood on the left?

2 A. Yes.

3 Q. Now, back in August of 2011, where did your brother
4 Robert live?

5 A. With me.

6 Q. Okay. And when you say with you, was it in the same
7 apartment with you or the same building?

8 A. Same apartment.

9 Q. Okay. How long had he been living with you?

10 A. Close to a year.

11 Q. All right. Did you have other family that lived in the
12 apartment?

13 A. My nephews lived -- not in the apartment, they lived in
14 the same building.

15 Q. Okay. Did your brother Robert work at that time?

16 A. No.

17 Q. Okay. Had he had jobs in the past?

18 A. Yes.

19 Q. At some point had Robert moved out of the Pittsfield
20 area to somewhere else in Massachusetts?

21 A. Yes.

22 Q. Where had he gone?

23 A. Worcester.

24 Q. Okay. And was there a reason why went there?

25 A. Alcohol program.

1 Q. Okay. Was issues with alcohol something that Robert
2 struggled with?

3 A. I can't really call it struggling. He drank a lot.

4 Q. Now, I'd like you to turn your attention back to the
5 weekend of Friday, August 26, going into Sunday, August 28.
6 The weekend in which the Tropical Storm Irene came through
7 New England. Do you remember that weekend?

8 A. Yes.

9 Q. Do you remember whether or not you saw your brother
10 Robert on Friday the 26th?

11 A. I seen him Friday, yes.

12 Q. Okay. Did you spend much time with him?

13 A. Yes.

14 Q. Okay. On that day, did you see, also see somebody by
15 the name of Edward Frampton?

16 A. Yes.

17 Q. Who is he?

18 A. He's a friend of mine and across the street -- he lives
19 across the street. He was a friend.

20 Q. Okay. I'm showing you Exhibit No. 1 and who is that?

21 A. Eddie Frampton.

22 Q. And did he live with somebody?

23 A. Yes. He lived with David Glasser.

24 Q. Okay. I'm showing you Exhibit Number 3. Who's that?

25 A. Dave.

1 Q. How long had they been neighbors of yours?

2 A. Probably about a year and a half.

3 Q. Okay. Now, on Friday evening, do you recall whether or
4 not your brother Robert Chadwell left to go somewhere?

5 A. Yes.

6 Q. To your understanding, where he was he going?

7 A. To his daughter's house.

8 Q. Okay. Did he often spend time there?

9 A. Yes.

10 Q. When I ask you about spending time, were there
11 occasions when he would stay over there?

12 A. Yes.

13 Q. Can you tell the members of the jury, did you see
14 Robert at all on Saturday the 27th?

15 A. No.

16 Q. Now, on Sunday the 28th, did you get a phone call that
17 day?

18 A. Yes, I did.

19 Q. Who was it from?

20 A. Willie.

21 Q. Willie Haywood?

22 A. Yes.

23 Q. And what did he ask you about?

24 A. He asked me --

25 MR. FRANK: Objection. Hearsay.

1 THE COURT: Well, is it a question or statement,
2 Mr. Capeless?

3 MR. CAPELESS: I asked him what he asked him about.

4 THE COURT: What I thought the question was,
5 Mr. Capeless, so the objection is overruled.

6 Q. (By Mr. Capeless) What did he ask you about?

7 A. He asked me if I had seen Robert.

8 Q. And had you?

9 A. No.

10 Q. And so what did you tell him?

11 A. I hadn't seen him.

12 Q. Did you have any contact with Robert at all on Sunday?

13 A. No.

14 Q. Okay. Did you try to contact him?

15 A. Yes.

16 Q. Okay. How?

17 A. I blew up his telephone, you know, went all over the
18 place, his daughter's, family members.

19 Q. Okay. Did you see him at all?

20 A. No.

21 Q. Did you come in contact with anybody who had seen him?

22 A. No.

23 Q. Okay. Now, the following day, Monday the 29th, did
24 somebody come to your house?

25 A. Yes.

1 Q. And who was that?

2 A. The Pittsfield Police.

3 Q. Okay. And did they ask you about something?

4 A. Yes.

5 Q. What did they ask you about?

6 A. They asked me if I had seen him.

7 Q. All right. And what did you tell them?

8 A. Not since Friday.

9 Q. Okay. So after the police had been there on Monday did
10 you in turn contact somebody else?

11 A. I filed a missing persons report on Monday.

12 Q. All right. Did you also call somebody?

13 A. I just talked to Willie.

14 Q. Okay. And what did you talk to Willie about?

15 A. About Rob.

16 Q. Just so the ladies and gentlemen of the jury
17 understand, to your understanding, was Willie in the
18 Pittsfield area?

19 A. No.

20 Q. All right. Where was he?

21 A. He was in New York, Plattsburgh.

22 Q. After you spoke with Willie, did you go somewhere?

23 A. Just looking for Rob.

24 Q. Okay. Do you remember going over to his apartment?

25 A. To Eddie's?

1 Q. I'm sorry, to Ed's apartment.

2 A. Right.

3 Q. And can you tell the members of the jury what did you
4 find when you got there?

5 A. Just the door was locked, TV on, nobody there.

6 Q. Did you knock?

7 A. Yes.

8 Q. Did you go inside?

9 A. No.

10 Q. You said earlier that on Sunday you said you blew up
11 his phone trying to get ahold of him. Do you recall his
12 number?

13 A. No, not now.

14 Q. If I showed you something, might it help you refresh
15 your memory?

16 A. Yes.

17 Q. I ask you to just look at this number here. Does that
18 refresh your memory as to his number?

19 You can take your time.

20 Can you see it clearly?

21 A. I believe that is it.

22 Q. And so what is the number?

23 A. 358 --

24 MR. FRANK: Objection.

25 THE WITNESS: -- 2972.

1 MR. FRANK: He's reading.

2 THE COURT: I will let you lay a further foundation.

3 Q. (By Mr. Capeless) Does that refresh your recollection
4 as to what the number was?

5 A. Yes.

6 Q. To your memory, what's the number?

7 A. Excuse me?

8 Q. To your memory, what is the number?

9 A. 325-7972.

10 Q. Are you sure about that?

11 A. Not really.

12 Q. Okay. After speaking with the police, you filed a
13 report. You talked to Willie, you go to the apartment, did
14 you still try to keep -- try to find Robert?

15 A. Yes.

16 Q. Were you able to get in touch with him at all?

17 A. No.

18 Q. On Wednesday the 31st, around mid day, do you recall
19 seeing the police?

20 A. Yes.

21 Q. Okay. In the neighborhood?

22 A. Yes.

23 Q. Can you tell the members of the jury, what kind of
24 police presence was there in the neighborhood around your
25 house and on Linden Street and near where Ed Frampton's

1 house was?

2 A. It was pretty thick.

3 THE COURT: I'm sorry. I couldn't hear you.

4 THE WITNESS: Pretty thick.

5 Q. (By Mr. Capeless) Did this include uniform officers?

6 A. Yes.

7 Q. What about plainclothes detective?

8 A. There were more plainclothes than uniform.

9 Q. Did those officers talk to you?

10 A. Yes.

11 Q. Did they talk to other members of your family?

12 A. They talked to my girlfriend.

13 Q. Okay.

14 (Pause)

15 MR. CAPELESS: I have no other questions, Your Honor.

16 THE COURT: Mr. Frank, you may cross-examine.

17 MR. FRANK: Thank you.

18

19 **CROSS EXAMINATION BY MR. FRANK**

20 Q. Good morning.

21 Sir, you live at 247 Linden Street; is that correct?

22 A. Yes.

23 Q. And is that -- I'm sorry. I represent David Chalue.

24 We have never spoken; is that also correct?

25 A. No.

1 Q. Okay. That is across the street from the Glasser
2 household; is that correct?

3 A. Diagonally, yes.

4 Q. Diagonally across.

5 Were you there on Saturday afternoon before the storm?

6 A. Yes.

7 Q. And did you hear a loud argument occur in the afternoon
8 right around the Glasser apartment area?

9 A. No.

10 MR. FRANK: Okay. Thank you.

11 THE COURT: Redirect examination.

12 MR. CAPELESS: No, Your Honor.

13 THE COURT: Mr. Chadwell, you are excused. Thank you.

14 MR. CAPELESS: Thank you.

15 (The witness stepped down.)

16 THE COURT: You may call your next witness.

17 (Todd Briggs, sworn)

18 THE COURT: Mr. Briggs, good afternoon. If I could ask
19 you to keep -- to focus on the question and answer only that
20 question, please.

21 THE WITNESS: Yes.

22 THE COURT: You may proceed.

23 (Todd Briggs)

24 **DIRECT EXAMINATION BY MR. CAPELESS**

25 Q. In a clear voice can you tell the members of the jury

1 your name, please.

2 A. Todd Briggs.

3 Q. All right. What do you do for living, sir?

4 A. I'm an investigator for Berkshire County Sheriff's
5 office.

6 Q. How long have you had that position?

7 A. Since end of last year, November of last year.

8 Q. And you've been in law enforcement for how long?

9 A. Twenty years.

10 Q. And previously, you worked in what agency?

11 A. Lee Police Department.

12 Q. Now, back in early September of 2011, and going
13 forward, were you involved in an investigation into the
14 disappearance of David Glasser, Edward Frampton, and Robert
15 Chadwell?

16 A. Yes.

17 Q. Now, as part of that investigation, did you and other
18 investigators execute search warrants to get cell phone
19 records for people related to the investigation?

20 A. Yes.

21 (Pause)

22 Q. (By Mr. Capeless) I'm going to show you that. Do you
23 recognize that multipage document?

24 A. Yes.

25 Q. Is this one of the cell phone records that were

1 received via the search warrant?

2 A. Yes.

3 Q. And it is for what number?

4 A. (413)329-1737.

5 Q. And over the course of your investigation you
6 determined and had the search warrant executed for the phone
7 because it related to what person?

8 A. Willie Haywood.

9 MR. CAPELESS: Your Honor I'm going to ask that be
10 entered and marked as Exhibit 28.

11 THE COURT: Any objection?

12 MR. FRANK: No objection.

13 THE COURT: Admitted.

14 (Exhibit No. 28, cell phone record/Willie Haywood,
15 marked)

16 Q. (By Mr. Capeless) I'm going to hand you back Exhibit
17 Number 28, in case you need to refer to it. Did you have
18 occasion, once it was received, to go through those records?

19 A. Yes, I did.

20 Q. And, particularly, did you look through what record or
21 phone calls were transpiring on the evening of Saturday
22 August 27, 2011 into the early morning hours of Sunday the
23 28?

24 A. Calls between Mr. Haywood and Mr. Chadwell.

25 Q. All right. And at least regarding that Saturday, do

1 the records indicate that there were phone calls between the
2 two of them?

3 A. Yes.

4 Q. Approximately how many?

5 A. Approximately 8 to 10. I can -- if you give me a
6 second.

7 (Pause)

8 THE WITNESS: Approximately 12.

9 Q. (By Mr. Capeless) And the last phone call is at what
10 time?

11 A. I'm sorry, 11:21 p.m.

12 Q. And that went from which phone to which phone?

13 A. Mr. Chadwell called Mr. Haywood.

14 Q. Okay. Now, showing you that document, is that another
15 of the cell phone records that were received via those
16 search warrants?

17 A. Yes.

18 Q. And this is for what number?

19 A. (431)347-7258.

20 Q. And this is related to what person?

21 A. Adam Hall.

22 MR. CAPELESS: Your Honor, I'm going to ask that be
23 entered and marked as Exhibit 29.

24 THE COURT: Any objection?

25 MR. FRANK: No objection.

1 THE COURT: Admitted.

2 (Exhibit No. 29, cell phone records/Adam Hall, marked)

3 Q. (By Mr. Capeless) Showing you this multipage document,
4 is that another set of cell phone records received?

5 A. Yes.

6 Q. And this is for what number?

7 A. (413) 770-4036.

8 Q. And this is related to what person?

9 A. Adam Hall.

10 MR. CAPELESS: Okay. I'm going to ask that be entered
11 and marked as Exhibit 30, Your Honor.

12 THE COURT: Any objection?

13 MR. FRANK: No objection.

14 THE COURT: Admitted.

15 (Exhibit No. 30, cell phone records/Adam Hall, marked)

16 Q. (By Mr. Capeless) Showing you that multipage document,
17 is that another one of the cell phone records received via
18 the search warrants?

19 A. Yes.

20 Q. For what number?

21 A. (516) 712-8141.

22 Q. And that's related to what person?

23 A. David Chalue.

24 MR. CAPELESS: Your Honor, I am going to ask that be
25 entered and marked as Exhibit 31.

1 THE COURT: Any objection?

2 MR. FRANK: Yes, may we go sidebar.

3 THE COURT: You may.

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1 (Beginning of Sidebar Discussion)

2 THE COURT: Mr. Frank.

3 MR. FRANK: Yes, Your Honor, I understand you've made a
4 ruling on this, this is -- this is obtained as the search
5 warrant which was based, in part, upon information that has
6 been obtained, been redacted from the search warrant.

7 THE COURT: So you're simply preserving your appellate
8 rights by raising an objection now?

9 MR. FRANK: At a minimum, yes. I would encourage you
10 to revisit that ruling however.

11 THE COURT: I'm not going to revisit it unless there is
12 something new and different to bring in sidebar. You can
13 just note your objection, I will make sure your rights are
14 preserved.

15 MR. FRANK: Okay. Thank you.

16 (End of Sidebar Discussion)

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1 (Exhibit Number 31, cell phone records/David Chalue,
2 marked)

3 THE COURT: Objection is overruled and admitted.

4 Q. (By Mr. Capeless) Showing you this much larger
5 document, is that another set of cell phone records that
6 were received via the search warrants.

7 A. Yes.

8 Q. This is for what number?

9 A. (413)358-1655.

10 Q. And that is for a phone related to what person?

11 A. Kayla Sewell.

12 Q. Okay. Is (sic) the records actually in her name?

13 A. They are not.

14 Q. Okay. But you determined, in the course of the
15 investigation, that it was hers?

16 A. They that was her phone, yes.

17 MR. CAPELESS: Your Honor, I'm going to ask that be
18 marked as Exhibit 32.

19 THE COURT: Any objection.

20 MR. FRANK: No objection.

21 THE COURT: Admitted.

22 (Exhibit Number 32, cell phone records/Kayla Sewell,
23 marked)

24 Q. (By Mr. Capeless) Showing you that document, are those
25 cell phone records also among those obtained via the search

1 warrant?

2 A. Yes.

3 Q. And this is for what number?

4 A. (413)358-5966.

5 Q. And this is for a phone related to what person?

6 A. Allyson Scace.

7 MR. CAPELESS: Your Honor, I'm going to ask that be
8 entered and marked as Exhibit 33?

9 MR. FRANK: No objection.

10 THE COURT: Admitted.

11 (Exhibit Number 33, cell phone records/Allyson Scace,
12 marked)

13 Q. (By Mr. Capeless) And handing you that multipage
14 document, is that another set of cell records received via
15 the search warrant?

16 A. Yes, it is.

17 Q. Now, sir, and that is for what number?

18 A. (413)212-6638.

19 Q. And this was for a phone associated with what person?

20 A. Alexandra Ely.

21 Q. Just so it's clear to the members of the jury, the
22 first name is?

23 A. Alexandra.

24 Q. Dra?

25 A. Yes.

1 MR. CAPELESS: Your Honor, I'm going to ask that be
2 entered and marked as Exhibit 34.

3 THE COURT: Any objection?

4 MR. FRANK: No objection.

5 THE COURT: Admitted.

6 (Exhibit No. 34, cell phone records/Alexandra Ely,
7 marked)

8 Q. (By Mr. Capeless) Handing you that document, is that
9 another set of cell phone records received via the search
10 warrant?

11 A. Yes, it is.

12 Q. For what number?

13 A. (419)559-6450.

14 Q. And that's associated with what person's phone?

15 A. Katelyn Carmin.

16 MR. CAPELESS: I ask that be entered and marked as
17 Exhibit 35, Your Honor?

18 MR. FRANK: No objection.

19 THE COURT: Admitted.

20 (Exhibit No. 35, cell phone record/Kaitlyn Carmen,
21 marked)

22 Q. (By Mr. Capeless) Finally, showing you that set of
23 documents, was that the last or another of the cell phone
24 records that were received via the search warrant?

25 A. Yes.

1 Q. And that is for what number?

2 A. (518)878-6170.

3 Q. And this is for a cell phone associated with what
4 person?

5 A. Nicole Brooks.

6 Q. All right. And the records themselves, are they
7 actually in her name?

8 A. They're her dad's name, Donald Brooks.

9 MR. CAPELESS: Your Honor, I ask that be entered and
10 marked as Exhibit 36.

11 MR. FRANK: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 36, cell phone records/Nicole Brooks,
14 marked)

15 Q. (By Mr. Capeless) Can you tell the members of the jury,
16 Investigator Briggs, at the beginning of the investigation
17 and early September of 2011, while the three men were still
18 missing, were attempts made to contact various agencies to
19 determine whether or not there had been official contact
20 with any of the three?

21 A. Yes.

22 Q. Were the banks contacted?

23 A. Yes.

24 Q. In particular, was the Pittsfield Cooperative Bank
25 contacted regarding David Glasser?

1 A. Yes.

2 Q. Showing you this one-page document, do you recognize
3 what's depicted there?

4 A. Yes.

5 Q. Does that show the banking records for an account of
6 David Glasser for the year of 2011 from January to December?

7 A. Yes.

8 MR. CAPELESS: Your Honor, I'm going to ask that be
9 entered and marked as Exhibit 37.

10 THE COURT: Any objection?

11 MR. FRANK: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 37, bank records for David Glasser,
14 marked)

15 Q. (By Mr. Capeless) Handing you back Exhibit 37,
16 Investigator Briggs, did you have an occasion to go through
17 and look at the records?

18 A. Yes, I did.

19 Q. Can you tell the members of the jury, did you notice a
20 pattern regarding deposits and withdrawals?

21 A. Well, the deposits were made at the beginning of each
22 month and that day the deposits were withdrawn, same day,
23 each month.

24 Q. Okay. So does that start in January?

25 A. Starts in January.

1 Q. Does the pattern change at some point?

2 A. September.

3 Q. What happened?

4 A. There was no withdrawal. The deposit went in, there
5 was no withdrawal.

6 Q. No withdrawal in October?

7 A. No withdrawal.

8 Q. Any withdrawal in November?

9 A. Not until the federal government withdrew the money
10 that they were putting in that wasn't being withdrawn.

11 MR. CAPELESS: I have no other questions at this time,
12 Your Honor. This is a witness that I would elect to recall
13 later as to other matters.

14 THE COURT: All right. Do you wish to cross-examine,
15 Mr. Frank?

16 MR. FRANK: No cross-examination at this time, subject
17 to the agreement we've made.

18 THE COURT: Thank you, very well.

19 Mr. Briggs, you are excused.

20 THE WITNESS: Thank you, Your Honor.

21 (The witness stepped down.)

22 THE COURT: You may call your next witness.

23 MR. CAPELESS: Lisa Archambeault, please.

24 (Lisa Archambeault, sworn)

25 THE COURT: Good afternoon, ma'am.

1 THE WITNESS: Good afternoon.

2 THE COURT: I've observed that you're a little bit soft
3 spoken, so I want to remind you to keep your voice up so we
4 can all hear you and answer only the question put to you
5 please.

6 Can you do that for me?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 Ladies and gentlemen, should you, during any witness
10 not hear something, if you raise your hand we will have the
11 response repeated for you.

12 (Lisa Archambeault)

13 **DIRECT EXAMINATION BY MR. CAPELESS**

14 Q. In a clear voice, will you please tell His Honor and
15 members of the jury your name and spell your last name,
16 please?

17 A. Lisa Archambeault, A-R-C-H-A-M-B-E-A-U-L-T.

18 Q. And where do you live, ma'am?

19 A. 254 Linden Street.

20 Q. How long have you lived there?

21 A. About four years now.

22 Q. Who do you live there with?

23 A. Myself, my husband, and my two grandchildren.

24 Q. Okay. I'm going to show you what's marked as Exhibit
25 Number 2. Do you recognize that?

1 A. Yes.

2 Q. And what does that show?

3 A. The front of my house.

4 Q. Okay. Where do you live in the building?

5 A. The windows on the second floor, that's my apartment.

6 Q. Okay. Back in August of 2011 do you recall who lived
7 on the first floor?

8 A. Dave and Eddie.

9 Q. Okay. And at that point, 2 1/2 years ago, August of
10 2011, how long had you lived there?

11 A. I moved in in March.

12 Q. Okay. Were David and Eddie already there when you
13 moved in?

14 A. Yes.

15 Q. Okay. Did you come to know them while you lived --
16 while they lived there and you lived there together?

17 A. Yes.

18 Q. Okay. Did you get along with them?

19 A. Yeah.

20 Q. Did you know either one of them to have a job?

21 A. No.

22 Q. Okay. Would you see them come and go?

23 A. Dave, I would. He would come and go a lot.

24 Q. What about Ed?

25 A. He was more a homebody.

1 Q. Okay. And when you saw Dave come and go, how would he
2 come and go?

3 A. His truck.

4 Q. Okay. And, showing you Exhibit Number 4, is the truck
5 depicted there?

6 A. Yes.

7 Q. I'm just going to hold it up. And can you point?

8 A. Right there in the driveway.

9 Q. Okay. Did you come to know some of their habits as far
10 as how they lived and took care of their apartment?

11 A. Yes.

12 Q. In particular, did you know come to know how they were
13 about locking and unlocking their doors?

14 Well --

15 A. (No response)

16 Q. Well, did you come to learn a habit about them locking
17 or unlocking the doors at night?

18 MR. FRANK: Objection.

19 THE COURT: Nature of your objection.

20 MR. FRANK: First of all, leading; second of all, asked
21 and answered.

22 THE COURT: I don't think it has been asked and
23 answered.

24 I will allow you to rephrase the question.

25 Q. (By Mr. Capeless) Did you come to know what their

1 habits were regarding the doors at night?

2 A. I know that entry door that comes into the building was
3 always shut and locked because I lived upstairs.

4 Q. And what about the back door, going into the first
5 floor apartment at night?

6 A. It was shut.

7 Q. Okay. I'd like you to turn your attention to the
8 weekend of Friday, Saturday, and Sunday, the 26, 27 and 28
9 of 2011, the weekend of Tropical Storm Irene, do you recall
10 that weekend?

11 A. I do.

12 Q. On that Saturday, did you see Dave and Ed?

13 A. Yes.

14 Q. Where did you see them?

15 A. I seen Eddie on the porch and Dave just coming and
16 going.

17 Q. Okay. And did you see somebody else there at the
18 apartment?

19 A. Later on that night I did.

20 Q. Okay. And was this somebody you recognized?

21 A. Yeah, the man from across the street.

22 Q. Do you remember his name?

23 A. Chadwell.

24 Q. I'm showing you Exhibit Number 26. Who's depicted
25 there?

1 A. That's Chadwell.

2 Q. And is that the person you just referred to?

3 A. Yup.

4 Q. About what time during the evening did you see Robert
5 Chadwell at the apartment?

6 A. The last time I seen him it was late because I -- I had
7 to go downstairs and ask Dave to move his truck so that my
8 mother could get her car in the driveway because of the
9 storm, so it was pretty late.

10 Q. Okay. And about what time was it, to your
11 recollection, you asked Mr. Glasser to do that?

12 A. It was after 10:00.

13 Q. Okay. Now, tell the members of the jury when he went
14 down to move his truck so your mother's car could get in --

15 A. Right.

16 Q. After that was done, how were the vehicles positioned?

17 A. My aunt Teresa's car was up almost -- there's a fence
18 that runs right here on the side of the house. There's a
19 fence that runs in the back here that separates the two
20 yards. My aunt Teresa's car and then my mother's car and
21 then my car and then Dave's truck.

22 Q. All right. And so that Dave's truck was located where
23 relative to the street?

24 A. He was at the end, the very end of the driveway.

25 Q. Now, late Saturday evening do you recall hearing

1 anything downstairs?

2 A. We could hear the people talking down there.

3 Q. At some point did it stop?

4 A. Yeah.

5 Q. Okay. Did you hear something else besides people
6 talking?

7 A. Banging, there was somebody banging.

8 Q. And it sounded like someone banging where? On what?

9 A. On the front door.

10 Q. Okay. Did you hear anything after that?

11 A. No.

12 Q. Do you recall about what time you went to bed Saturday
13 night?

14 A. I don't know, between 1:00 and 2:00.

15 Q. Now, the following day Sunday --

16 A. Uh-huh.

17 Q. -- do you recall what you did in the morning?

18 A. I went downstairs to ask Dave to move his truck so we
19 could get our vehicles out so we could go back to camp.

20 Q. When you went downstairs, what did you actually do?

21 A. I knocked on the door.

22 Q. Would this be the front door or the back door?

23 A. Front door.

24 Q. Did you get any answer?

25 A. No.

1 Q. Okay. Did you knock loudly?

2 A. Yeah.

3 Q. Okay. Did you hear anything from inside the apartment?

4 A. Just the TV.

5 Q. Okay. Did you go back again to try to get

6 Mr. Glasser --

7 A. I went down quite a few times to get him to move his
8 vehicle because without him moving it none of us could get
9 our vehicles out.

10 Q. Over the course of the day did you have any contact
11 with anybody down in that apartment?

12 A. No.

13 Q. All right. Now, the following day on Monday the 29,
14 did you go back again to try to get him to move it?

15 A. I think at that point I might have already had my car
16 out of there, but they still weren't home.

17 Q. Okay. At some point, were you able to get somebody
18 else to move their car --

19 A. Yeah.

20 Q. -- so your mother could get out?

21 A. The neighbor that lives across from this building.

22 Q. Did you ever go inside the apartment?

23 A. No.

24 Q. The downstairs apartment?

25 A. No.

1 Q. On Monday, can you tell the members of the jury did you
2 still hear the television?

3 A. I don't know if it was Monday, but I know the
4 television did shut off at some point because we didn't hear
5 it anymore.

6 Q. Okay. Did you see anybody other than Dave or Ed or
7 Mr. Chadwell go approach the apartment or appear to go in?

8 A. Yes.

9 Q. Did some people come around looking for them?

10 A. Yes.

11 Q. Okay. Now, come Wednesday, the 31st, do you recall
12 police coming?

13 A. Yes.

14 Q. Can you tell the members of the jury, how many police
15 officers were there?

16 A. That came to the house on Wednesday?

17 Q. Yes, or into the neighborhood.

18 A. A lot.

19 Q. Okay. Did they talk to you?

20 A. Yup. They asked if we had seen them downstairs.

21 Q. Okay. When you say "we", who else did they talk to
22 beside yourself?

23 A. He -- oh, they talked to everybody in the neighborhood.

24 Q. Okay. Now, Miss Archambeault, tell the members of the
25 jury, did you have a lounge chair?

1 A. Pardon me?

2 Q. Did you have a lounge chair at the apartment?

3 A. Outside, yes.

4 Q. And can you describe it, what was it like?

5 A. It was a metal outdoor chair with the -- they have
6 leather straps and they had two cushions on it.

7 Q. What did the cushions look like?

8 A. One of them was like a print and the other one, I think
9 it was striped.

10 Q. Now, can you tell the members of the jury at some point
11 did you notice one of those cushions missing?

12 A. Yes.

13 Q. When did you notice it? Was it over that weekend of
14 the storm?

15 A. Yeah.

16 Q. How did you notice it was missing?

17 A. Because we were going to take the chair back to camp
18 with us.

19 Q. Okay. I'm going to show you what's marked as Exhibit
20 Number 23 and tell you, do you see one of those cushions
21 there in photograph?

22 A. Yeah, it's this one. (Indicating)

23 Q. Okay. I'm just going to hold that up, and ask you to
24 point out.

25 A. This one right here. (Indicating)

1 Q. Okay.

2 MR. CAPELESS: I've no other questions of this witness.

3 THE COURT: Mr. Frank, cross-examination?

4 **CROSS EXAMINATION BY MR. FRANK**

5 Q. Good afternoon, Ms. Archambeault. I am Attorney Donald
6 Frank and I represent Mr. Chalue.

7 We've never spoken, is that right?

8 A. No.

9 Q. I just have a few areas of questioning.

10 You had a neighbor by the name of Christina Valley; is
11 that correct?

12 A. Yes.

13 Q. And she lived next door to you?

14 A. Yes.

15 Q. And you knew her to be the daughter of Joe Williams; is
16 that correct?

17 A. Yes.

18 Q. And Joe Williams is the president of the Hells Angels,
19 did you have that information?

20 A. I didn't until after this started.

21 Q. And at the time around the hurricane and a little
22 before the hurricane, there were two males living with her
23 or staying with her I should say; is that right?

24 A. Yes.

25 Q. And those two males, you don't know, they came in a

1 week before or two days before the hurricane; is that fair
2 to say.

3 A. I don't know because I wasn't there.

4 Q. But you saw them coming in and out; is that fair to
5 say?

6 A. I think Friday was the day of the storm, so I came home
7 that morning.

8 Q. Okay. And did you know one of them to be named Whitey?

9 A. I didn't know any of them.

10 Q. You didn't know either of their names; is that correct?

11 A. No.

12 Q. Okay. Now, on Saturday, that is Saturday before the
13 storm, which is Saturday night?

14 A. Okay.

15 Q. You heard a loud argument in the neighborhood; that is
16 fair to say?

17 A. Yeah, that afternoon.

18 Q. That afternoon. And the argument was between
19 Mr. Frampton who you knew; is that right?

20 A. Uh-huh.

21 Q. You need to say yes or no, I'm sorry.

22 A. Yes, I'm sorry.

23 Q. And between one or both of the males who resided with
24 Christina Valley; is that correct?

25 A. Yes, there -- he was arguing with the man outside.

1 Q. Just one of the men?

2 A. Yeah.

3 Q. Okay. And what race was he? Was he Afro American?
4 Was he White?

5 A. I don't know. I'm not sure.

6 Q. If I show you a document indicating his race, would
7 that refresh your recollection?

8 A. Yup.

9 Q. I will come back to that in just a moment so we don't
10 have to wait.

11 A. Okay.

12 Q. And, Ms. Archambeault, the argument, it was loud,
13 right?

14 A. Uh-huh -- yes, I'm sorry.

15 Q. And it was between Mr. -- it was loud enough so that
16 the whole neighborhood could hear it; is that right?

17 A. Right.

18 Q. And you heard that the argument -- and you heard that
19 the argument was about money, you could hear that the
20 argument had something to do with money; is that correct?

21 A. Right.

22 Q. And that's a yes, I'm sorry?

23 A. Yes, I'm sorry.

24 Q. That's okay.

25 And you also heard that the money was about drugs; is

1 that also correct?

2 A. I assumed it was, yeah.

3 Q. Well, did you hear that it was or did you assume that
4 it --

5 A. I assumed it, was.

6 Q. Why did you make that assumption?

7 MR. CAPELESS: Objection.

8 THE COURT: Sustained.

9 Q. (By Mr. Frank) All right. Did you hear it was about
10 crack cocaine?

11 MR. CAPELESS: Objection, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 THE COURT: The answer was no.

15 MR. FRANK: Okay.

16 Q. (By Mr. Frank) And were -- there were threats being
17 made; is that fair to say?

18 A. Just that he wanted his money.

19 Q. And Mr. Frampton was yelling at him back; is that also
20 right?

21 A. Telling him that he knew he was going to get his check
22 on the first.

23 Q. Okay. And that didn't seem to satisfy the person who
24 was yelling at him; is that right?

25 A. I don't know.

1 Q. Okay. Now, you had, after that argument, after that
2 day, that is Saturday before the storm, did you ever see
3 either of those gentlemen who were living with Christina
4 Valley again?

5 A. Yeah.

6 Q. And you saw them on the Sunday of the storm?

7 A. Yes.

8 Q. And Monday?

9 A. I don't know.

10 Q. Okay. After Monday or Tuesday, they were no longer
11 there; is that fair to say as far as you knew?

12 A. I honestly don't know.

13 Q. Okay. You didn't see them again though; is that right?

14 A. No.

15 Q. Okay. And I asked you a question regarding the --
16 okay. Now, that night you testified for the District
17 Attorney that you heard knocking on the door some time
18 before you went to bed; is that right?

19 A. Yes.

20 Q. And you went to bed some time before two o'clock; is
21 that right?

22 A. Yeah, probably.

23 Q. All right.

24 A. It was late.

25 Q. You stayed up very late that night?

1 A. Yeah, my mother and I were talking at the table.

2 Q. All right. And the windows were open that night; is
3 that fair to say?

4 A. No. They were closed because we were supposed to have
5 a storm.

6 Q. I see. And you share a -- you share a hallway with the
7 Glasser residence; is that right?

8 A. Yes.

9 Q. And so people on the -- the main entrance anyways, you
10 share that door; is that -- is that right?

11 A. The hallway door.

12 Q. The hallway door?

13 A. Yes.

14 Q. Okay. And it's fair to say that at some point you
15 heard loud knocks in the front or sometime between
16 10:00 p.m. and midnight?

17 A. No, it was between midnight and 1:00.

18 Q. Well, do you remember giving a statement to the police
19 on August 31, 2011?

20 A. Uh-huh.

21 Q. And when you gave that to police, that statement to the
22 police, your memory was fresh; is that correct?

23 A. Uh-huh.

24 Q. And it was a Wednesday, I think the date you gave that
25 statement; is that right?

1 A. Maybe, I don't remember what day it was.

2 Q. Okay. And I'm going to ask you to look at the
3 statement, if you will.

4 A. Okay.

5 Q. Then I'm going to ask you a series of questions.

6 A. Okay.

7 Q. Do you see the highlighted portion?

8 A. Yup.

9 (Pause)

10 THE COURT: Mr. Frank, just to be clear, are you
11 seeking to have her refresh her memory?

12 MR. FRANK: Yes, I am, Your Honor.

13 THE COURT: All right. Why don't you make that clear.

14 MR. FRANK: Yes.

15 Q. (By Mr. Frank) Do you remember what it is you told the
16 police on August 31, 2011 regarding the knocks?

17 A. I don't recall, but that's saying between 10:00 and
18 midnight.

19 Q. Okay. So and let me ask you, this is your signature --
20 excuse me, your signature appears on the back of the
21 document?

22 A. Yup.

23 Q. And this is your -- on the front of the document
24 appears your initials; is that also correct?

25 A. Yes.

1 Q. And it's fair to say that as far as this document is
2 concerned you told the police on August 31, 2011 that you
3 did hear a series of loud knocks at the front door some time
4 between 10:00 p.m. and midnight?

5 A. Yes.

6 MR. CAPELESS: Objection, Your Honor.

7 THE COURT: Mr. Frank, you're asking her what the
8 document says or what her memory says?

9 MR. FRANK: I'm asking her what the document says.

10 THE COURT: The objection is overruled.

11 Q. (By Mr. Frank) I'm sorry. And your answer is?

12 A. Yes.

13 Q. Okay. And now, does that refresh your recollection as
14 to what you told police regarding the series of loud
15 knocking?

16 A. Well, it says it on that paper.

17 Q. All right. And when you gave this statement, you
18 were -- you didn't have any other information about the
19 case, the missing men, the alleged murders or anything like
20 that, you were just trying to help the police; is that fair
21 to say?

22 A. Yes.

23 Q. And you were -- when you were trying to help the
24 police, you were trying to give the best information
25 possible to the police so that they could figure out what

1 was going on with these three men or at least two of the
2 men; is that right?

3 A. Yes.

4 Q. And it is at that point that you told the police that
5 you heard the loud knock sometime between 10:00 p.m. and
6 midnight, correct?

7 A. I guess, yes.

8 Q. I'm sorry, didn't hear your answer.

9 A. Yes.

10 Q. Okay. Now, when you heard the knocking, it seemed
11 quiet downstairs otherwise except for the knocking; is that
12 fair to say?

13 A. Yeah, it was fairly quiet, you could hear the guys
14 talking downstairs.

15 Q. Well, you -- there were no voices to go along with the
16 knocking; is that right?

17 A. Right.

18 Q. And you were -- and after the knocking, it was quiet,
19 is that also right?

20 A. Uh-huh.

21 Q. And nothing seemed out of the ordinary that night; is
22 that also right?

23 A. No.

24 Q. That's incorrect?

25 A. Pardon me.

1 Q. That's wrong? Nothing seemed --

2 A. No, that's right. It was quiet.

3 Q. Okay. So when the voices -- when somebody was banging
4 on the door you -- just to be clear, you didn't hear anybody
5 saying, Hello, let me in, or anything like that?

6 A. No, just banging.

7 Q. Just banging on the door and then after you heard the
8 banging on the door you -- it was quiet in the apartment,
9 right?

10 A. Right.

11 Q. And you stated and you were up until 1:30, two o'clock
12 that night and didn't hear any other knocking on the door,
13 right?

14 A. Right.

15 Q. You didn't hear any arguments, you didn't hear any
16 yelling?

17 A. No.

18 THE COURT: Mr. Frank, do you expect to be awhile with
19 this witness?

20 MR. FRANK: No. No. I have --

21 Q. (By Mr. Frank) You've never met Mr. Chalue before and
22 never seen him before; is that correct?

23 A. No.

24 MR. FRANK: Thank you. I have nothing further.

25 THE COURT: Redirect examination?

REDIRECT EXAMINATION BY MR. CAPELESS

Q. You said earlier that just before the storm you came home?

A. Right.

Q. From where?

A. Camp.

Q. Okay. And you've been spending summer there at the camp?

A. Yes.

MR. CAPELESS: I have no other questions, Your Honor.

THE COURT: Recross examination, Your Honor.

MR. FRANK: No recross.

THE COURT: Ms. Archambeault, you are excused.

THE WITNESS: Thank you.

(The witness stepped down.)

THE COURT: Ladies and gentlemen, we're going to take the luncheon recess. It's a little after 1:00. I want to make sure you get a full hour for your lunch break so we're going to reconvene at 10 after 2:00.

While I'm thinking about it, just for scheduling purposes, so I don't forget later today, there are two days that we are not going to be in session. I want you to know what they are for your own scheduling purposes -- May 2, which is a Friday. And May 16, which is also a Friday.

So for your own scheduling purposes you can plan you

1 will not be here on those days.

2 Bear in mind my cautionary instructions over the lunch
3 break, please don't discuss the case. We will see you at
4 2:10.

5 (The jury exited at 1:10 p.m.)

6 THE COURT: We are in recess.

7 (The Court exited at 1:10 p.m.)

8 (* * * * *)

9 (The Court entered at 2:15 p.m.)

10 THE COURT: Good afternoon. Bring the jury in.

11 (The Court entered at 2:15 p.m.)

12 (The defendant was present.)

13 (The jury entered at 2:11 p.m.)

14 THE COURT: Mr. Capeless, you may call your next
15 witness.

16 MR. CAPELESS: Andrew Johnston, please.

17 (Andrew Johnston, sworn)

18 THE COURT: Good afternoon, sir.

19 THE WITNESS: Hi, how are you.

20 THE COURT: If I could remind you to keep your voice up
21 so everyone can hear you and answer only the question put to
22 you, please.

23 THE JUROR: Thank you.
24
25

1 (Andrew Johnston)

2 DIRECT EXAMINATION BY MR. CAPELESS

3 Q. In a clear voice, can you tell at the Court and the
4 jury your name, please.

5 A. Andrew Johnston.

6 Q. What do you your friends and family call you?

7 A. AJ.

8 Q. Where do live?

9 A. 247 Linden.

10 Q. How long you have lived in Pittsfield?

11 A. Since I was two and I am 52 now.

12 Q. What do you do for a living?

13 A. Construction, I'm a carpenter.

14 Q. Who do you work for?

15 A. Johnston Builders.

16 Q. Okay. And who do you work with?

17 A. With my brothers and some other co-workers.

18 Q. Now, do you know or did you know Robert Chadwell?

19 A. Yes, I do.

20 Q. How?

21 A. I grew up with him and I have a daughter with his
22 sister.

23 Q. I'm going to show you what's marked as Exhibit 26. Do
24 you recognize who that is?

25 A. That's Robert Chadwell.

1 Q. Now, did you also know somebody by the name of David
2 Glasser?

3 A. Yes, I did.

4 Q. How did you come to know him?

5 A. I was working on a job and he lived next door to the
6 job and he was playing his drums, and I like drums so he let
7 me come in and he played for me, let me play his drums and
8 he was nice.

9 Q. Did he eventually end up working along side with you?

10 A. Yeah.

11 Q. So about how far back was that? How long did you know
12 him for, roughly?

13 A. Since probably late '90s.

14 Q. I'm going to show you Exhibit Number 3. Do you
15 recognize who that is?

16 A. That's David Glasser.

17 Q. Did he go by any nicknames?

18 A. Drummer Dave.

19 Q. At some point, did David Glasser have a civil injury
20 case -- do you understand what I mean?

21 A. A civil -- yes; yes. Which he got a settlement?

22 MR. FRANK: Objection. Objection.

23 THE COURT: Sustained as nonresponsive. You may ask
24 your next question.

25 Q. (By Mr. Capeless) At some point did he get some sort of

1 insurance settlement?

2 A. Yes, he did.

3 Q. Do you have any idea about how much money it was?

4 MR. FRANK: Objection.

5 THE COURT: Basis of objection?

6 MR. FRANK: Hearsay foundation.

7 THE COURT: Is there a non-hearsay foundation,

8 Mr. Capeless?

9 MR. CAPELESS: Well, all right.

10 Q. (By Mr. Capeless) Did you talk with David Glasser about
11 what he should do with the money?

12 A. Yes, I did.

13 Q. Did you make a suggestion to him?

14 A. Yes. I recommended he get a truck and start doing yard
15 work and doing odd jobs.

16 Q. Did he take your advice?

17 A. Yes, he did.

18 Q. I'm going to show you what's marked as Exhibit Number
19 5. Do you recognize that vehicle?

20 A. Yes, that's David's truck.

21 Q. Can you tell the members of the jury how David Glasser
22 felt about that truck?

23 MR. FRANK: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: He loved it. It was his life. It was

1 the best thing that he did with his money.

2 Q. (By Mr. Capeless) And what did he do with the truck?

3 A. He did odd jobs, he did dump runs, and garbage removal,
4 and things like that.

5 Q. Okay. Now, back in August of 2011, where did David
6 Glasser live?

7 A. On Linden Street in Pittsfield.

8 Q. And did you live in the same address on Linden Street
9 at that time?

10 A. No.

11 Q. Where were you living then?

12 A. Then I was living with my brother John on Egremont in
13 Pittsfield.

14 Q. Okay. But you knew where David Glasser lived?

15 A. Right.

16 Q. Did you know who he lived with?

17 A. With Eddie Frampton.

18 Q. Showing you Exhibit No. 1, do you -- do you recognize
19 who that is?

20 A. It's Dave's roommate Eddie.

21 Q. Now, I'd like you to turn Your Honor's attention to the
22 weekend of Friday, August 26, through Saturday and then
23 Sunday, August 28 of 2011. The weekend of Hurricane Irene
24 or Tropical Storm Irene came through New England, do you
25 recall that weekend?

1 A. Yes, I do.

2 Q. On Saturday evening, do you recall seeing David
3 Glasser?

4 A. Yes. He picked me up, and took me shopping so I could
5 get things so -- the store was coming.

6 Q. Now, while you were with him, did he talk to you about
7 what he was thinking and how felt about the upcoming days?

8 A. He was afraid of a --

9 MR. FRANK: Objection.

10 THE COURT: Basis of the objection?

11 MR. FRANK: First of all, it's nonresponsive; it's a
12 yes or no, and it's going into hearsay.

13 THE COURT: Well, are you offering this for its truth?

14 MR. CAPELESS: Yes, state of mind, Your Honor.

15 THE COURT: Objection is overruled.

16 Q. (By Mr. Capeless) What did he say to you?

17 A. He was worried about the trial that was coming up over
18 him getting beat up and his truck getting taken and he was
19 afraid of that and he had seen Adam Hall and he told me that
20 I --

21 Q. All right. I'm just going to just stop you for a
22 second.

23 He said he was concerned about the truck?

24 A. Right.

25 Q. Did he say what plans he had for the weekend, what he

1 was going to do?

2 A. He told me not to call him the next day, he was going
3 to stay in and not do anything and hide out for the weekend.

4 Q. Okay. Now, can you tell the members of the jury had
5 Mr. Glasser expressed to you concern about this trial coming
6 up in the past?

7 A. Yes, he did.

8 Q. Now, the following day, Sunday, did you try to get
9 ahold of him.

10 A. I tried anyways and he didn't answer.

11 Q. Okay. The next day, Monday the 29th, had you had any
12 arrangements with David Glasser about him giving you a ride?

13 A. He was going to pick me up for working. He gave me a
14 ride to work pretty much every day.

15 Q. About what time was he supposed to get you?

16 A. 7:00, 7:30.

17 Q. Did he show up?

18 A. He didn't show up.

19 Q. Were you able to otherwise get a ride the to work?

20 A. Yes.

21 Q. After working, did you go by the apartment on Linden
22 Street?

23 A. Right. I texted him and I went and I seen his truck in
24 the driveway and I tried his phone again several times and
25 he didn't answer.

1 Q. Now, a couple of days later, Wednesday the 31st, did
2 you happen to go over to the apartment on Linden Street?

3 A. Yes.

4 Q. Okay. And when you got there, what did you see?

5 A. It was police everywhere.

6 Q. Okay. And did you talk with any of Robert's family
7 members?

8 A. Yes, I did, Leslie Chadwell.

9 Q. Now, now one other thing, Mr. Johnston, do you know a
10 person by the name of Willie Haywood?

11 A. Yes, I do.

12 Q. How did you know him? How long have you known him?

13 A. I've known him -- his sister is married to my brother.

14 Q. Okay.

15 A. So I can never not remember not knowing Willie.

16 Q. Okay. And did he have a special relationship with
17 Robert Chadwell?

18 A. Yes, they did. They were partners.

19 Q. Okay. I'm going to show you what's marked as Exhibit
20 Number 27. Do you recognize who is shown in that
21 photograph?

22 A. That's Robert T. and Willie.

23 Q. Did something happen to Willie Haywood recently?

24 A. Yeah, he was stricken with cancer.

25 MR. FRANK: Objection.

1 THE COURT: Basis of the objection?

2 MR. FRANK: Basis of knowledge.

3 THE COURT: Overruled. You may answer.

4 Q. (By Mr. Capeless) What happened with Willie?

5 A. He was stricken with cancer and he got sick and he
6 passed away recently.

7 Q. When did he pass away?

8 A. The 19th.

9 MR. CAPELESS: I have no other questions, Your Honor.

10 THE COURT: Mr. Frank, you may cross-examine.

11 MR. FRANK: Thank you.

12 **CROSS EXAMINATION BY MR. FRANK**

13 Q. When Mr. Glasser spoke to you about his feelings about
14 worried about the trials coming up, he told you about a
15 conversation he had regarding the Hells Angels; is that
16 correct?

17 A. Can you say that again?

18 Q. Yes. When he was telling you about him being nervous
19 about the upcoming trial, he told you something about the
20 Hells Angels; is that correct?

21 A. Yes.

22 Q. And he told you that there had been -- that
23 Mr. Frampton had been visited by Hells Angels members; is
24 that correct?

25 A. That's what he told me.

1 Q. And he didn't say anything about Mr. Chalue; is that
2 right?

3 A. No.

4 Q. And he didn't say anything about Aryan Brothers; is
5 that right?

6 A. No.

7 Q. And he told you that Mr. Frampton had been warned off
8 by the Hells Angels; is that right?

9 A. He told me that a guy came and said he could tell Dave
10 he better change his story.

11 Q. Okay. And that was a Hells Angels, somebody in Hells
12 Angels?

13 A. Someone that Eddie said he had never seen him before.

14 Q. But he was outfitted as a Hells Angels?

15 A. Correct.

16 MR. FRANK: Thank you very much.

17 THE COURT: Redirect examination?

18 MR. CAPELESS: No questions. Thank you.

19 THE COURT: Mr. Johnston, you are excused.

20 Thank you.

21 (The witness stepped down.)

22 THE COURT: You may call your next witness.

23 MR. BARRY: Alan Catalano.

24 (Alan Catalano, sworn)

25 THE COURT: Good afternoon, Mr. Catalano, if I could

1 remind you to keep your recognize up and answer only the
2 question put to you, please.

3 Can you do that?

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you. You may proceed.

6 MR. BARRY: Thank you, Your Honor.

7 **(Alan Catalano)**

8 **DIRECT EXAMINATION BY MR. BARRY**

9 Q. First of all, could you tell the jury your name,
10 spelling your last name?

11 A. Alan Catalano, C-A-T-A-L-A-N-O.

12 Q. Do you currently work, Mr. Catalano?

13 A. Not right now.

14 Q. Have you worked in the past?

15 A. Yes, I have.

16 Q. Approximately three years ago where did you work?

17 A. Pearlman's scrapyard.

18 Q. How long did you work at Pearlman's?

19 A. A few years.

20 Q. Can you explain to us what kind of business is
21 Pearlman's scrap yard?

22 A. Basically a metal recycling place, people bring in old
23 metals and people get paid for them.

24 Q. Where is that business located?

25 A. On Merriam Street in Pittsfield.

1 Q. And when you worked there, what did you do at
2 Pearlman's?

3 A. I pretty much ran the office. I took the metals in and
4 weighed them and then filled out the receipts and paid the
5 people for what they brought in.

6 Q. Getting to this case, do you know someone by the name
7 of David Glasser?

8 A. Yes.

9 Q. And how did you know Mr. Glasser?

10 A. He's in there at least once or twice a week.

11 Q. He was a customer of Pearlman's?

12 A. Yes.

13 Q. Showing you what's been marked as Exhibit 3.

14 Showing you what's marked as Exhibit 3, do you
15 recognize that person?

16 A. That's Mr. Glasser.

17 Q. Do you also know someone by the name of Richie Stansen?

18 A. Yes.

19 Q. How did you know Mr. Stansen?

20 A. He came in with him on occasion.

21 Q. And, lastly, do you know someone by the name of Adam
22 Hall or Leo Hall?

23 A. Yes.

24 Q. Did you know him as Adam Hall or Leo?

25 A. I knew him as Leo.

1 Q. How did you know Leo?

2 A. He came in once in awhile, I seen him around.

3 Q. I'm showing going to show you a picture and ask you if
4 you recognize the person in that picture?

5 A. That's Leo.

6 MR. BARRY: I ask it be it to be marked as an exhibit.

7 THE COURT: Any objection?

8 MR. FRANK: No objection, I apologize.

9 THE COURT: Admitted.

10 THE CLERK: Exhibit 38.

11 (Exhibit No. 38, photograph, marked)

12 MR. BARRY: Thank you.

13 Q. (By Mr. Barry) I want to turn your attention now back
14 several years back to July of 2009 going back to 2009. Are
15 you aware during July of 2009 David Glasser had a business
16 with Pearlman related to this case?

17 A. Yes, sir.

18 Q. Can you explain to the jury what that business was?

19 A. He brought in some metals, some old carburetors,
20 alternators, wires, things like that. Brought them in and
21 got paid for them.

22 Q. And when he came in, was he alone or was he with
23 someone?

24 A. I believe he was alone.

25 Q. All right. And when Glasser came in, did you give him

1 money for what he brought in?

2 A. Yes.

3 Q. And when Pearlman buys items from the customer, was it
4 the company's regular course of business to make a receipt
5 for the transaction?

6 A. Yes.

7 Q. And when you made the receipt, was it made in good
8 faith?

9 A. Yes.

10 Q. I'm going to show you a document and ask you if you
11 recognize the document?

12 A. Yes, one of the receipts.

13 Q. Whose handwriting is on the receipt?

14 A. Mine.

15 Q. And who did you make the receipt out to?

16 A. David Glasser.

17 Q. Okay. And was this for the items that he brought in in
18 July of 2009 that you just mentioned?

19 A. Yes.

20 MR. BARRY: I ask it be marked as an exhibit?

21 THE COURT: Any objection?

22 MR. FRANK: No objection.

23 THE COURT: Admitted.

24 THE CLERK: Exhibit 39.

25 (Exhibit No. 39, Pearlman's receipt, marked)

1 Q. (By Mr. Barry) I'm going to hand you back what has
2 been marked as Exhibit 39. I will just ask if you can
3 explain to the jury what exactly did Mr. Glasser bring in
4 July 2009?

5 A. He brought in a pound of copper, 31 pounds of aluminum,
6 52 pounds of dirty aluminum, batteries, an alternator, and
7 some wire.

8 Q. All right. And are you aware whether or not he brought
9 in a carburetor?

10 A. Yes.

11 Q. And how is that noted on the receipt?

12 A. It's under 52 pounds that says dirty aluminum. I
13 actually wrote what it was right above it. It says carbs.

14 Q. Short for carburetor?

15 A. Yes.

16 Q. And how much did you give Mr. Glasser for all of the
17 items he brought in?

18 A. For everything, 18.65.

19 Q. Now, when Mr. Glasser brought in these items, including
20 the carburetor, what did you do with the items after you
21 bought them from Mr. Glasser?

22 A. With the condition of the stuff he brought in, it was
23 in working order, I put it off to the side. A lot of times
24 people will come in there and people will buy things, if
25 they worked. It's a lot cheaper than buying them new.

1 Q. Okay. When you put these items aside did anybody come
2 and look at them?

3 A. A few people did.

4 Q. All right. And what happened after a couple of people
5 came and looked at them?

6 A. Few people looked, one of them told me he thought he
7 knew who they belonged to.

8 It happens, on occasion there. And he made a phone
9 call to who he thought they belonged to.

10 Q. Did someone then come to the shop?

11 A. And Leo came down and looked at the parts.

12 Q. Okay. And after Mr. Hall looked at the parts, what did
13 he do?

14 A. He told me they were his. He asked what I paid for
15 them. I told him the 18.65 he gave me a 20; those are his
16 parts. And he left with them.

17 Q. And how long was it after Mr. Glasser sold you the
18 items that Mr. Hall came down and bought those items
19 including the carburetor back?

20 A. I believe it was within a few days.

21 MR. BARRY: Thank you, I have no more questions, Your
22 Honor.

23 THE COURT: Cross examination?

24 MR. FRANK: Thank you.

25

CROSS EXAMINATION BY MR. FRANK

1
2 Q. Richie Stansen, that's Mr. Hall's brother, correct?

3 A. I have no idea.

4 MR. FRANK: Okay. Thank you.

5 THE COURT: Redirect examination?

6 MR. BARRY: Nothing further, Your Honor.

7 THE COURT: You're excused, Mr. Catalano. You may step
8 down. Thank you.

9 You may call your next witness.

10 MR. BARRY: Commonwealth calls Brittany Beggs.

11 (Brittany Beggs, sworn)

12 THE COURT: Ms. Beggs, good afternoon.

13 THE WITNESS: Hello.

14 THE COURT: You may be seated. Thank you.

15 If I could remind you to keep your voice up and answer
16 only the question put to you, please.

17 You may proceed.

18 MR. BARRY: Thank you, Your Honor.

19 **(Brittany Beggs)**

20 **DIRECT EXAMINATION BY MR. BARRY**

21 Q. First of all, can you just introduce yourself to the
22 jury?

23 A. Hello, I'm Brittany Beggs.

24 Q. Where do you live, Ms. Beggs?

25 A. I live in California, in Placerville, California.

1 Q. Are you originally from California?

2 A. Yes.

3 Q. Do you have any children?

4 A. I have an almost six-year-old son.

5 Q. And what is his name?

6 A. Thor.

7 Q. Do you know someone by the name of Adam Leo Hall?

8 A. Yes, he's the father of my son.

9 Q. Did he have a nickname he went by?

10 A. Leo.

11 Q. And I'm just showing you exhibit -- marked as Exhibit

12 38. Do you recognize that person?

13 A. Yup, that's him.

14 Q. In terms of Mr. Hall, when did you first meet Mr. Hall?

15 A. I met him in July of '07.

16 Q. Okay. And where did you meet him?

17 A. At the restaurant. I worked at the Fremont Bistro at
18 that time.

19 Q. And where was that, what state?

20 A. In California, Lake Tahoe.

21 Q. After you met him, did you are start to date shortly
22 after that?

23 A. Yes.

24 Q. And did you move somewhere?

25 A. I moved to Pittsfield to be with him.

1 Q. And once you moved to Pittsfield, where did you live?

2 A. We lived a number of different places. We stayed at
3 the clubhouse and then we bought property in Peru,
4 Massachusetts, and then we got a house in Pittsfield, 122
5 Madison.

6 Q. And when you say "clubhouse" what clubhouse is that?

7 A. The Hells Angels clubhouse in Lee.

8 Q. And in terms of the Peru property, do you remember the
9 address that you bought property?

10 A. 48 East Main, Peru.

11 Q. Okay. And while you dated Mr. Hall, did you continue
12 to live with him or be with him?

13 A. I moved back and forth to California I think in a
14 two-year span. I spent half of that time in California.

15 Q. And do you still currently date Mr. Hall?

16 A. No.

17 Q. All right. In terms of this case, I want to go back
18 several years back to the year 2009, specifically around
19 July 21, 2009. Do you remember that time period?

20 A. Yes.

21 Q. Were you dating Mr. Hall back in July of 21, 2009?

22 A. Yes, I was.

23 Q. And on the dates leading up to July the 1, 2009, did
24 Mr. Hall mention the name David Glasser to you at all?

25 A. Yes.

1 Q. And did you know David Glasser?

2 A. Yes, I did.

3 Q. And how did you know Mr. Glasser?

4 A. He did odd jobs for us on the Peru property or whatever
5 odd jobs Leo needed done.

6 Q. And what, exactly, did Mr. Hall mention to you about
7 David Glasser on the dates leading up to July 21, 2009?

8 A. He was upset for him for stealing carburetors out of
9 the garage at our Madison property.

10 Q. Do you remember if Mr. Hall said he was going to do
11 anything because of that?

12 A. He was going to question him.

13 MR. FRANK: Objection.

14 THE COURT: Are you offering this for Mr. Hall's state
15 of mind?

16 MR. BARRY: I am, Your Honor.

17 THE COURT: The objection, assuming it's hearsay, is
18 overruled.

19 Q. (By Mr. Barry) I will ask the question again.

20 Do you remember if Mr. Hall said he was going to do
21 anything once he -- because he found out this situation with
22 the carburetors?

23 A. He was going to question him about them.

24 Q. Okay. Did he indicate how he was going to question
25 him?

1 A. He was going to beat him up and find out what happened.

2 Q. And did he say where he was going to beat up Mr.

3 Glasser?

4 A. He was going to take him to the Peru property.

5 Q. I will now want to talk about July 21, 2009 that day.

6 Do you remember where you woke up that day?

7 A. We woke up at the clubhouse.

8 Q. Okay. And what did you do after -- when you say "we"
9 who do you mean, "we"?

10 A. Me and Leo and my son.

11 Q. After you guys wake up, what did you do? What
12 happened?

13 A. We went to town and I dropped off Leo at Hamlin Street.

14 Q. And did Leo tell you why he wanted to be dropped off
15 there?

16 A. He was meeting David Glasser there to pick up a motor
17 vehicle and transport it to Peru.

18 Q. Okay. After you dropped off Leo to do that, at some
19 point in time did you meet him back up at Peru?

20 A. Yes.

21 Q. All right. And when you got -- in terms of Peru and
22 the property we are talking about, I will show you a
23 photograph. I will ask you if you recognize what's depicted
24 in that photograph?

25 A. Yes, that's the Peru property.

1 MR. BARRY: I ask this be marked as an exhibit.

2 MR. FRANK: No objection.

3 THE COURT: Admitted.

4 THE CLERK: Exhibit.

5 (Exhibit No. 40, photograph, marked)

6 Q. (By Mr. Barry) All right. I will hand you back what
7 has been marked as Exhibit 40. I am going to put an image
8 on the screen. Is that image on the screen the same -- oh
9 it was -- is the image on the screen the same as the exhibit
10 in front of you?

11 A. Yes, it is.

12 Q. Okay. And in terms of Peru property, can you just
13 explain this property to the jury in terms of its location
14 to other places?

15 A. It is in this, the woods. I believe it's forest
16 service land all around it. And there is a neighbor
17 directly across the street. Other than that, there's no
18 neighbors.

19 Q. Okay. Would you say it's a secluded area?

20 A. Yes.

21 Q. When you got to the peru property, what was the first
22 thing that you saw?

23 A. The Hummer and David Glasser's truck were parked in the
24 driveway.

25 Q. Okay. If I can stop you there.

1 Did you see two vehicles?

2 A. Yes.

3 Q. I'm going to show you two paragraphs and ask you if you
4 recognize what's depicted in both of those photographs?

5 A. Yes.

6 Q. And what would that photograph be?

7 A. This is Leo's Hummer.

8 Q. Okay. And what would that photograph be?

9 A. That is David Glasser's truck.

10 MR. BARRY: I ask that be marked as the next Exhibit.

11 THE COURT: First of all, any objection?

12 MR. FRANK: No objection.

13 THE COURT: Let us know which one you are asking to be
14 marked first.

15 MR. BARRY: First I ask the Hummer be marked.

16 THE COURT: Very well.

17 THE CLERK: Exhibit 41.

18 (Exhibit No. 41, photograph, marked)

19 MR. BARRY: And then for 42 the pickup truck.

20 (Exhibit No. 42, photograph, marked)

21 Q. (By Mr. Barry) I'm going to hand you back what's marked
22 as Exhibit 41, 42. I'm going to put two images on the
23 screen.

24 First, in terms of the pickup truck in front of you,
25 that is the same as depicted on the screen?

1 A. Yes, it is David Glasser's truck.

2 Q. All right. Next, in terms of the Hummer picture that's
3 in front of you, is that the same that's on the screen?

4 A. Yes, it is.

5 Q. Okay. Now, when you arrived, you indicated turning
6 back to the exhibit of the Peru property which is Exhibit
7 40. Could you explain to the jury where exactly you saw
8 those two cars parked?

9 THE COURT: If it would be easier, you can step down
10 and point to the screen if --

11 MR. BARRY: If you want to point or use the pointer,
12 whatever is easy for you.

13 THE WITNESS: The truck was like here and the Hummer
14 was right there, and this bus was not there. And I pulled
15 in behind the truck, the bus --

16 Q. (By Mr. Barry) Now, in addition to seeing those two
17 vehicles, did you see anybody on the property when you
18 drove?

19 A. David Glasser and Leo were in front of David Glasser's
20 truck to the driver's front corner.

21 Q. Okay. And what was going on when you first arrived?

22 A. David Glasser was crouched down and Leo was standing
23 over him with a bat in his hand.

24 Q. And was he doing anything with that bat?

25 A. He was tapping his boots.

1 Q. When you say Mr. Glasser was crouched down, can you
2 just explain to the jury what you mean by crouched down?

3 A. I don't think he was sitting. I think he was just
4 hunkered down on his -- squatting.

5 Q. Okay. And without what was being said, were there
6 words going back and between Mr. Hall and Mr. Glasser?

7 A. I couldn't hear them, but it appeared to be aggressive.

8 MR. FRANK: Objection.

9 THE COURT: Basis of your objection?

10 MR. FRANK: Sure. She couldn't hear anything beyond
11 that.

12 THE COURT: I don't think she said what it was that was
13 said. Your objection is overruled.

14 MR. BARRY: I'm sorry. You can answer.

15 THE WITNESS: It appeared to be an aggressive
16 interlude.

17 Q. (By Mr. Barry) Who was aggressive towards the other?

18 A. Leo.

19 Q. What happened next?

20 A. I got out of the car and walked up towards them, and
21 Leo told me to get a pen and paper out of my car.

22 Q. Before you got out and approached, did you see Leo do
23 anything?

24 A. Oh, yeah, I saw him hit him with the baseball bat.

25 Q. Hit who?

1 A. I saw Leo hit David Glasser with the baseball bat.

2 Q. Okay. And how did he hit him?

3 A. He swung back handed at his arm.

4 Q. Okay. And when -- did he hit him in the arm?

5 A. Yes.

6 Q. Okay.

7 A. Tinged. Tinged.

8 Q. Tinged? Okay.

9 Can you explain how Mr. Glasser's arms were positioned
10 when he was struck by the baseball bat?

11 A. He was trying to protect himself. His hands were above
12 his head.

13 Q. And how many times did you see Mr. Hall hit
14 Mr. Glasser?

15 A. Once.

16 Q. And at any point did Mr. Hall mention to you if he hit
17 Mr. Glasser before you arrived?

18 A. Later he told me he had hit him in the barn before I
19 got there.

20 MR. FRANK: Objection. Move to strike -- actually,
21 objection withdrawn.

22 THE COURT: All right. That makes it easy.

23 Q. (By Mr. Barry) Did he tell you how many times he hit
24 him in the barn?

25 A. No.

1 Q. So after that occurred, you indicated you got out of
2 your truck and you went towards them?

3 A. Yeah.

4 Q. And what happened once you got towards, went towards
5 Mr. Glasser and Mr. Hall?

6 A. Leo told me to go back into the car and get a piece of
7 paper and a pen.

8 Q. Did you do that?

9 A. Yes.

10 Q. And when you returned with that paper and pen, did you
11 hear Mr. Hall say anything to Mr. Glasser?

12 A. He was telling him that he needed to pay for the stolen
13 carburetors.

14 Q. Did you see -- did you give the paper and pen to
15 Mr. Hall?

16 A. I did.

17 Q. And did you see what he did with that paper and pen?

18 A. He had David Glasser write on the page.

19 Q. Okay. Could you tell what he was having Mr. Glasser
20 write?

21 A. No.

22 Q. While he was writing down on the piece of paper,
23 Mr. Glasser -- did Mr. Hall still have that baseball bat in
24 his hand?

25 A. Yes.

1 Q. And after Mr. Glasser signed that piece of paper, what
2 happened next?

3 A. He told me I had to move my car out of the way, that he
4 was going to take David Glasser to the hospital. They were
5 going to go to the hospital.

6 Q. And did you move your car?

7 A. Yes.

8 Q. And did you see them leave?

9 A. Yes.

10 Q. In which vehicle did they leave?

11 A. They left in Leo's Hummer and David Glasser was
12 driving.

13 Q. All right. Was Mr. Glasser's pickup truck still on the
14 property when they left?

15 A. Yeah.

16 Q. Did Mr. Hall give you any instructions in terms of that
17 pickup truck before he left with Mr. Glasser to the
18 hospital?

19 A. Yes. He told me to move the truck down the road to a
20 neighbor's house, a friend of his. I can't remember his
21 name, but it was about two miles down the road. I moved the
22 truck, drove the truck there.

23 Q. How did you get back to the Peru property?

24 A. I walked back.

25 Q. Did you see Mr. Hall at some point after this incident?

1 A. Yes.

2 Q. And did he tell you anything about what occurred on the
3 property with Mr. Glasser?

4 A. That -- yeah, he told me that he had confronted him
5 about the stolen carburetors in the barn and after they
6 moved the motor vehicle in there, and that he admitted to
7 taking the carburetors but that Leo's brother Richie had
8 told him it was okay to take the carburetors out of our
9 garage.

10 Q. After this event happened, did anything happen to
11 Mr. Hall?

12 A. He was arrested about a week later.

13 Q. And what did you do at that point?

14 A. I drove to California.

15 Q. After you left the area, did you learn you were facing
16 some criminal charges?

17 A. Yes.

18 Q. And was that for things that occurred on July 21?

19 A. I was charged with all of the same counts as Leo was
20 charged with.

21 Q. Okay. As a joint venturer?

22 A. Right.

23 Q. And do you have an attorney on those charges?

24 A. I do.

25 Q. Did you ever give the police statements with your

1 version of events that occurred before you were charged?

2 A. No, I did not.

3 Q. Okay. Had you since talked to the police about what
4 had occurred on July 21st after you were charged?

5 A. Yes.

6 Q. And when was the first time you did that?

7 A. December, this last December.

8 Q. And to your knowledge, have you been granted immunity
9 after telling the police your version of the events of what
10 occurred?

11 A. Yes, I have.

12 (Pause)

13 (Off the record discussion amongst The Commonwealth.)

14 MR. BARRY: No further questions, Your Honor.

15 Mr. Frank, you may cross examine.

16 MR. FRANK: Thank you.

17 **CROSS EXAMINATION BY MR. FRANK**

18 Q. Good afternoon. I'm attorney Don Frank and I represent
19 David Chalue.

20 A. Hello.

21 Q. You have never met David Chalue?

22 A. I have not.

23 Q. There was a plan that Mr. Hall devised in regard to the
24 carburetor; is that right?

25 A. Right.

1 Q. And Mr. Hall came up with that plan, right?

2 A. Right.

3 Q. You didn't have any part of making any plan in terms of
4 what to do regarding the carburetors and Mr. Glasser, right?

5 A. No.

6 Q. And the plan kind of had a few different moving parts
7 to it, would you agree with that characterization?

8 A. Sure.

9 Q. And part of it included getting Mr. Glasser to the
10 house, right?

11 A. Right.

12 Q. And you didn't anything to do with that, did you?

13 A. No.

14 Q. And it involved threatening Mr. Glasser, right?

15 A. Right.

16 Q. And you didn't have anything to do with that, right?

17 A. Right.

18 Q. It is really Mr. Hall doing that?

19 A. Yes.

20 Q. And in terms of thinking about how to get the car and
21 the title to the car, that was all Mr. Hall's thinking,
22 right?

23 A. Yes.

24 Q. That wasn't your thinking?

25 A. No, he wouldn't have listened.

1 Q. All right. And that was, Mr. Hall -- Mr. Hall operated
2 that way in general; is that right?

3 MR. BARRY: Object, Your Honor.

4 THE COURT: Overruled. You may answer.

5 THE WITNESS: Yes.

6 Q. (By Mr. Frank) He often had a lot of things going on
7 with different people?

8 A. Right.

9 Q. And he would involve people in various plans, right?

10 A. Right.

11 Q. And the people didn't know some people involved in the
12 same plan, what the other plan -- what the other people were
13 doing?

14 MR. BARRY: Objection, Your Honor.

15 THE COURT: Basis of the objection?

16 MR. BARRY: It's asking what someone else may know.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: I think he saw people as ways he could
19 get whatever he wanted from people. That's how he operated
20 with everybody constantly.

21 Q. (By Mr. Frank) And sometimes he would have people do
22 things and wouldn't tell them why he was having people do
23 things; is that right?

24 A. Right.

25 Q. And that was kind of his modus operandi?

1 A. Yeah.

2 MR. FRANK: Thank you very much. I have nothing
3 further.

4 THE COURT: Redirect examination?

5 MR. BARRY: Nothing further, Your Honor.

6 THE COURT: You're excused, Ms. Beggs.

7 Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: You may call your next witness.

10 MR. CACCAVIELLO: Commonwealth will call Earl Persip.

11 (Earl Persip, sworn)

12 THE COURT: Mr. Persip, good afternoon.

13 THE WITNESS: Good afternoon.

14 THE COURT: Can I remind you to keep your voice up so
15 that we can all hear you and answer only the question put to
16 you, please.

17 Can you do that?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you. You may proceed.

20 MR. CACCAVIELLO: Thank you Your Honor.

21 **(Earl Persip)**

22 **DIRECT EXAMINATION BY MR. CACCAVIELLO**

23 Q. Sir, will you start by introducing yourself to the
24 jury, please.

25 A. My name is Earl G. Persip, Jr.

1 Q. And, sir, where do you live?

2 A. Pittsfield, Mass.

3 Q. And do you work, sir?

4 A. Yes.

5 Q. What sort of work do you do or what sort of business do
6 you have?

7 A. I'm a car salesman at RBS Automotive.

8 Q. How long have you been in that business?

9 A. Twenty plus years.

10 Q. Now, sir, before I start asking you questions, I'm
11 going to ask you, do you have an understanding that you have
12 been granted immunity by this Court in order to come here
13 and testify?

14 A. Yes.

15 Q. And that you're, in effect, compelled to testify?

16 A. Yes.

17 Q. Now, sir, this business that you've been in, can you
18 tell us where in Pittsfield the street that it's on?

19 A. North Street near -- down by Berkshire Medical Center.

20 Q. And has it always been at that location?

21 A. Yes.

22 Q. Now, sir, do you know a person or did you know a person
23 by the name of David Glasser?

24 A. Yes, sir.

25 Q. And how long had you known David Glasser?

1 A. Probably approximately 10 to 12 years probably.

2 Q. What kind of relationship, if anything, did you have
3 with him?

4 A. Not really a relationship. I know him, though, from --
5 he's a taxi driver and I just know him.

6 Q. And I'm going to show you what's previously been marked
7 as Number 3, and who is that? Is that David Glasser?

8 A. Yes.

9 Q. And, sir, I will ask you about another person. Did you
10 know someone by the name of Adam Leo Hall?

11 A. Yes, sir.

12 Q. And how long have you known Mr. Adam Leo Hall?

13 A. Approximately six, seven years.

14 Q. And, again, what kind of relationship, if anything, did
15 you have with Mr. Hall?

16 A. No kind of relationship, but I do know him. And the
17 guy that does bodywork for me, I used to see him over his
18 house a lot.

19 Q. All right. Showing you what's been previously marked
20 as 38.

21 A. That's Mr. Hall.

22 Q. That's Mr. Hall.

23 Now, sir, I'm going to direct your attention back to
24 July of 2009, specifically the 29th or, I'm sorry, the 22nd
25 of July. Did you know David Glasser to own a truck?

1 A. Yes, sir.

2 Q. And what kind of truck was it?

3 A. Black Dodge.

4 Q. I'm going to show you what's previously been marked as
5 Exhibit Number 42. And do you recognize that truck?

6 A. Yes.

7 Q. And what is that?

8 A. That looks like David's truck.

9 Q. And back on July 22 of 2009, did you engage in a
10 transaction, a business transaction with Leo Hall?

11 A. Yeah.

12 Q. Okay. And can you tell us, first of all, where did it
13 take place?

14 A. Well, I told you I met him through a body guy of mine
15 named Joe. He did call me up. I was at the auction, and
16 tried to sell me a truck. I told him when I got back I
17 would come and look at it and I went and looked at it.

18 Q. So let me stop you there, sir. Did you get a call from
19 someone by the name of Joe?

20 A. Yes.

21 Q. And as a result of that call, did you then do
22 something? Where did you go?

23 A. I went to Hamlin Street when I got back to Pittsfield,
24 though, I was in Connecticut.

25 Q. Let me just stop you again. You went to Hamlin Street

1 in Pittsfield?

2 A. Yes.

3 Q. And at the Hamlin Street address, did you see that
4 truck?

5 A. Yes.

6 Q. And who was with the truck?

7 A. Joe and Mr. Hall, okay, and the redhead girl.

8 Q. And did you engage in a transaction with regard to that
9 truck?

10 A. Yes, I purchased the truck from him. I asked him to
11 see the title and he showed me the title and the title was
12 signed. I purchased the truck for \$2,000 from him.

13 Q. And just so we're clear, Mr. Persip, who did you engage
14 in the transaction with?

15 A. The girl.

16 Q. Okay. And who is the -- who was the girl with?

17 A. Well, Mr. Hall sent her out.

18 Q. All right. And so did you then -- did you hand over
19 money at that point?

20 A. Yeah, I handed it to her when she gave me the receipt
21 and the title.

22 Q. Okay. And did you then -- what did you do at that
23 point? Did you take immediate possession of the truck?

24 A. Yeah, and I brought it over to the -- over to my
25 business where I worked.

1 Q. Okay. Now, sir, did you -- after that transaction, did
2 you have plans that day to leave town?

3 A. Yes, I was going to Lake George for the weekend.

4 Q. Were you going with yourself?

5 A. No, with my girlfriend Carol Farrelly.

6 Q. And, sir, did you happen to see David Glasser as you
7 made your way out of town?

8 A. Yeah, it was at the O'Connell's Convenience Plus out on
9 Linden Street.

10 Q. And when you saw Mr. Glasser did you have a
11 conversation with him?

12 A. Well, what happened is -- it kind of come back to me.
13 The truck, that we were looking at, I asked him, you know,
14 did he give the truck to this guy to sell and he told me
15 yes, he did.

16 Q. Okay. And did he say anything else to you? Did you
17 have further conversation about that?

18 A. Yeah, I kind of -- I didn't like the way he was, he was
19 kind of acting like he was a little scared and I didn't feel
20 comfortable with it, so I brought the truck back and I put
21 it back where I found it -- where I bought it from.

22 Q. So what were you intending to do after that
23 conversation with Mr. Glasser?

24 A. Go back and get my money.

25 Q. From whom?

1 A. From Mr. Hall.

2 Q. So what did you do?

3 A. I went over to the corner of Daniels and Madison Avenue
4 where I know Mr. Hall's house to be.

5 Q. And what were you doing there?

6 A. Looking for Mr. Hall.

7 Q. Okay. And did you see Mr. Hall there?

8 A. No. He was not present.

9 Q. Now, let me just stop you for a moment. Before you got
10 there, Mr. Persip, did you see Mr. Glasser after you had the
11 conversation with him, did you see him get into any
12 particular car?

13 A. Personally, no.

14 Q. Was your attention drawn to that fact?

15 A. Miss Farrelly told me he just got in the car with the
16 State Trooper.

17 Q. Now, sir, when you went to find Mr. Hall -- I'm sorry,
18 what address is that again?

19 A. Corner of Madison and Daniels.

20 Q. So when you got there, did you see Mr. Hall?

21 A. No.

22 Q. Who did you see?

23 A. Some guys hanging out in front of his house, I think --
24 I believe. I'm not sure. I think one of them might be his
25 brother or something.

1 Q. And so what did you say?

2 A. I was kind of mad and I just said to him, Tell -- I
3 call him Leo. Okay. I know him by Leo.

4 I just said, Tell him I'm looking for him and I want my
5 money back because there is something funny with this truck
6 deal and I just want my money back.

7 Q. Okay. And did you say anything else to the people that
8 were there, particularly about anything your girlfriend had
9 said to you?

10 A. Yeah, because it was nothing funny about this; Why is
11 this guy getting in the car with the state troopers.

12 Q. And you said that to this --

13 A. Yeah, I said it to the people that was out front there.

14 Q. Sir, did you ever get your money back?

15 A. No, sir.

16 MR. CACCAVIELLO: One moment please, Judge.

17 (Off the record discussion amongst The Commonwealth.)

18 MR. CACCAVIELLO: No further questions.

19 THE COURT: Mr. Frank, you may cross examine.

20 **CROSS EXAMINATION BY MR. FRANK**

21 Q. I had a little trouble understanding -- excuse me.

22 First of all, I'm Attorney Don Frank and I represent
23 Mr. Chalue.

24 Good afternoon.

25 A. Okay. All right.

1 Q. I had a little bit of trouble understanding you. Did
2 you say that Mr. Hall, when he arrived at your location, was
3 with a woman and a guy named Joe?

4 A. Yeah, a woman -- the woman that just left out of here.

5 Q. The woman who just left?

6 A. The woman that was just in front of me, that was her.

7 Q. Okay. And he was also with a guy named Joe?

8 A. Yeah.

9 Q. And was that Joe Williams?

10 A. No, its a body guy, Joe Bouchard.

11 Q. Joe who?

12 A. Bouchard.

13 Q. Okay. I apologize.

14 When he sold you the truck, he sold it to you without
15 letting you know how he obtained title to the truck?

16 A. No. He told me the guy gave him the truck for money
17 that he owed him.

18 MR. FRANK: Okay. Thank you. I have nothing further.

19 THE WITNESS: Okay.

20 THE COURT: Redirect examination?

21 MR. BARRY: Nothing further.

22 THE COURT: Mr. Persip, you are excused.

23 You may step down.

24 You may call your next witness.

25 MR. BARRY: Commonwealth calls Trooper Dale Gero.

1 (Dale Gero, sworn)

2 THE COURT: Trooper, good afternoon.

3 THE WITNESS: Good afternoon, Your Honor.

4 THE COURT: If I could remind you to focus on the
5 question and answer only that question, please.

6 THE WITNESS: Yes, sir.

7 THE COURT: You may proceed.

8 MR. BARRY: Thank you, Your Honor.

9 (Dale Gero)

10 **DIRECT EXAMINATION BY MR. BARRY**

11 Q. First of all, could you tell us your name?

12 A. Trooper Dale Gero.

13 Q. I assume you are a trooper then?

14 A. Yes.

15 Q. How long have you been a trooper here in Massachusetts?

16 A. Yes.

17 Q. How long you have been a Massachusetts State Trooper?

18 A. Approximately eight years.

19 Q. And what's your current assignment right now with the
20 Mass. State Police?

21 A. I work for the State Police Detective Unit, Berkshire
22 County.

23 Q. How long you have been doing that?

24 A. Approximately two years.

25 Q. Do you know someone by name of Adam Leo Hall?

1 A. Yes, I do.

2 Q. Showing you a picture, do you recognize what I'm
3 showing you, what's been marked as Exhibit 38, do you
4 recognize that person?

5 A. Yes.

6 Q. And who's that?

7 A. Adam Lee Hall.

8 Q. Getting to this case, do you remember if you were
9 working on July 21, 2009?

10 A. Yes, I was.

11 Q. And what shift were you working?

12 A. I was working the evening shift which is 3:00 p.m. to
13 11:00 p.m.

14 Q. And approximately 4:00 p.m. do you recall if you
15 received a dispatch?

16 A. Yes, sir.

17 Q. What was the nature of that dispatch?

18 A. Report of assault and battery.

19 Q. All right. And based upon that, did you go somewhere?

20 A. Yes, I did.

21 Q. Where did you go?

22 A. Berkshire Medical Center. It's the local hospital in
23 Pittsfield, Massachusetts.

24 Q. And once you got there, did you see someone?

25 A. Yes, I did.

1 Q. And who did you see?

2 A. I saw David Glasser.

3 Q. All right. Showing you what's been marked as Exhibit
4 3, and ask you if you recognize that person?

5 A. Yes, I do.

6 Q. And who is that?

7 A. That is David Glasser.

8 Q. Okay. When you saw Mr. Glasser, at the Berkshire
9 Medical hospital, how did he appear to you?

10 A. Shook up and nervous.

11 Q. Now, when you first -- did you go and talk to him?

12 A. Yes, I did.

13 Q. And when you talked to him, did he show you anything?

14 A. Yes.

15 Q. Okay. Did he show you certain areas of his body?

16 A. Yes, he did.

17 MR. BARRY: At this point, Your Honor, I would offer in
18 Mr. Glasser's medical records as Exhibit 42 --

19 THE COURT: Any objection, Mr. Frank?

20 MR. BARRY: -- 43.

21 MR. FRANK: Judge, I may have a portion of an objection
22 as to matters that can be redacted, if we can address those
23 later. The general records, I have no objection to.
24 Perhaps we can address that after.

25 THE COURT: The document is admitted subject to later

1 argument regarding any possible redactions.

2 MR. BARRY: Thank you.

3 Thank you, Your Honor.

4 Forty-three, I apologize.

5 (Exhibit No. 43, medical records of David Glasser,
6 marked)

7 Q. (By Mr. Barry) Now, when you talked to Mr. Glasser,
8 where in the hospital did you talk to him?

9 A. The lobby of the emergency room.

10 Q. Without telling us what he said, did he explain
11 something that happened to him?

12 A. Yes.

13 Q. And based upon what he told you, did you ask him to do
14 anything?

15 A. Yes, I did.

16 Q. What did you ask him to do?

17 A. I asked him to come up to Cheshire State Police
18 barracks for a video and a written statement.

19 Q. And did he do that that day?

20 A. Yes, he did.

21 Q. Was it later on that day?

22 A. Yes.

23 Q. And after that first statement, did you have
24 Mr. Glasser come in to give a second statement?

25 A. Yes, I did.

1 Q. And on what day did you have Mr. Glasser come in for
2 that second statement?

3 A. That was July 23, 2009.

4 Q. All right. And where was that second statement taken?

5 A. That was at the Berkshire County State Police Detective
6 Unit, Pittsfield, Massachusetts.

7 Q. And what was the purpose of getting a second statement
8 from Mr. Glasser?

9 A. To gather more information.

10 Q. And how was it that Mr. Glasser got to that second
11 statement at, where was it located again?

12 A. State Police Detective Unit.

13 Q. I'm -- where is that located, that office?

14 A. Pittsfield, Massachusetts on North Street.

15 Q. Okay. How was it that Mr. Glasser got there?

16 A. I drove him there.

17 Q. Okay. And when you picked him up, where did you pick
18 him up?

19 A. Shell Gas Station on Linden Street, Pittsfield,
20 Massachusetts.

21 Q. And when you picked him up, what kind of vehicle were
22 you in?

23 A. I was in my State Police cruiser.

24 Q. Is that marked or unmarked?

25 A. Marked.

1 Q. When did you -- approximately, what time did you pick
2 him up?

3 A. Approximately 6:00 p.m.

4 Q. When you picked up Mr. Glasser, in your marked cruiser,
5 did you notice if there were other people around when you
6 picked him up?

7 A. Yes, there was.

8 Q. Once you picked him up, did you bring him then to an
9 interview?

10 A. Yes, I did.

11 Q. And in terms of this interview, was it longer than your
12 first interview?

13 A. Yes.

14 Q. And the second interview, was that also taped?

15 A. Yes, it was.

16 Q. And during that interview, are you aware or did
17 Mr. Glasser show police areas of his body again?

18 A. Yes, he did.

19 Q. And was this the same areas of the body that he had
20 showed you on July 21st, at the hospital?

21 A. Yes, it was.

22 Q. And were photos taken of Mr. Glasser of the areas of
23 the body that he was showing you and other police members?

24 A. Yes.

25 Q. I'm going to show you four photographs and ask you if

1 you recognize what's depicted in those photographs?

2 A. Yes, I do.

3 Q. And what's depicted in each of those photographs?

4 A. This would be the lower right shin area; lower ankle
5 area on the right foot; left elbow; left wrist of Mr.
6 Glasser.

7 Q. Okay. Is that a fair and accurate representation of
8 the way Mr. Glasser looked on July 23rd?

9 A. Yes.

10 Q. Now, there is a time stamp on those photographs; does
11 that indicate July 23rd?

12 A. No, it does not.

13 Q. What dates are reflected?

14 A. July 24th.

15 Q. Are these accurate?

16 A. No.

17 Q. Those -- okay. These photos were taken on July 23rd,
18 during an interview?

19 A. Yes.

20 MR. BARRY: Your Honor, I ask these be entered into
21 evidence in the order they were taken.

22 THE COURT: Any objection?

23 MR. FRANK: No objection.

24 MR. BARRY: Forty-four for the shin.

25 (Exhibit No. 44, photograph, marked)

1 MR. BARRY: Forty-five for the foot.

2 (Exhibit No. 45, photograph, marked)

3 MR. BARRY: Forty-six for the elbow.

4 (Exhibit No. 46, photograph, marked)

5 MR. BARRY: And 47 for this.

6 (Exhibit No. 47, photograph, marked)

7 Q. (By Mr. Barry) Trooper, I'm going to give you back
8 what's been marked as Exhibits 44 through 47.

9 I'm just going to put some images on the screen.

10 In Exhibit 44, does that appear to be the same image
11 that's in front of you?

12 A. Yes.

13 Q. And when you saw Mr. Glasser's ankle on this day, what
14 did you notice, if anything, about his ankle?

15 A. Bruising and swelling.

16 Q. Next, I'm going to show you 45. Does that appear to be
17 the same that's in front of you?

18 A. Yes.

19 Q. And what, if anything, did you notice about this area
20 of his body when you saw him?

21 A. It appeared to be bruised and swollen as well.

22 Q. Exhibit 46, in front of you, is that the same as what's
23 on the screen or is it the other one?

24 A. I think -- I think that's 47.

25 Q. I apologize. And what area of the body is that?

1 A. The left forearm.

2 Q. And what, if anything, did you notice about his body?

3 A. It was bruised and swollen.

4 Q. And lastly, the last exhibit in front of you, what area
5 of the body is that?

6 A. Left elbow.

7 Q. What, if anything, did you notice about Mr. Glasser's
8 elbow when you saw him?

9 A. That it was bruised and swollen as well.

10 Q. In terms of that interview, approximately how long did
11 that last, that second interview?

12 A. Approximately 30, 60 minutes, in that time frame.

13 Q. Who was present beside yourself for that second
14 interview in terms of police personnel?

15 A. Lieutenant David Foley, Trooper Steven Jones, Trooper
16 William Scott, and Trooper John Stec.

17 Q. And who was actually in charge of that interview, that
18 second one?

19 A. Trooper William Scott.

20 Q. And during that interview, are you aware whether or not
21 David Glasser received any phone calls?

22 A. Yes.

23 Q. After Mr. Glasser gave a statement, what, if anything,
24 did the police do in terms of Mr. Hall?

25 A. Went looking for Mr. Hall.

1 Q. All right. Were the police able to find Mr. Hall?

2 MR. FRANK: Objection.

3 THE COURT: Were the police able to find Mr. Hall?

4 MR. FRANK: Hearsay.

5 THE COURT: Overruled.

6 Q. (By Mr. Barry) Were the police and you able to find
7 Mr. Hall?

8 A. Yes, they were.

9 Q. Would -- where did you find him?

10 A. We were on Seymour Street --

11 MR. FRANK: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: We were in Seymour Street in Pittsfield.

14 Q. (By Mr. Barry) Just so we are clear, are you one of the
15 officers that found Mr. Hall?

16 A. Yes, I was.

17 Q. Were you the officer that actually pulled him over?

18 A. Yes, I was.

19 Q. And after you pulled over Mr. Hall, what kind of car
20 was he in?

21 A. It was a Hummer.

22 Q. Who was present in the Hummer with Mr. Hall, anybody?

23 A. There was a female driver.

24 Q. After you found Mr. Hall, what if anything did you do
25 with him?

1 A. We took him into custody.

2 MR. BARRY: Thank you. No more questions, Your Honor.

3 THE COURT: Mr. Frank.

4 MR. BARRY: Wait -- I apologize, Your Honor.

5 (Off the record discussion amongst The Commonwealth.)

6 MR. BARRY: May I go sidebar for a moment with counsel?

7 THE COURT: You may.

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1 (Beginning of Sidebar Discussion)

2 MR. BARRY: Your Honor, we didn't introduce the --
3 introduce the medical records. We were going to have them
4 read to the jury. These were the same medical records that
5 were redacted the same way as they were in the last trial,
6 so any mention of the word assault is taken out. This is
7 the same exact exhibit.

8 I am not sure --

9 THE COURT: Let me interrupt before the two of you have
10 a conversation.

11 MR. BARRY: I'm sorry, Your Honor.

12 THE COURT: You want to have someone read them now?

13 MR. BARRY: This Trooper, read them to the jury.

14 THE COURT: And you have not had a chance to look at
15 them?

16 MR. FRANK: I looked at them awhile ago back. I know
17 my issues will be the same as the prior trial.

18 THE COURT: Well, I want you to have an opportunity to
19 look at them before I make a decision as to whether or not
20 they should be read to the jury. I don't know why it's
21 important this witness read them now.

22 MR. BARRY: It's not, Your Honor. It was just
23 continuity.

24 THE COURT: We can have it done at later time once
25 you're satisfied with the exhibit, I will allow them to be

1 read to the jury.

2 MR. BARRY: Okay. Thank very much, Your Honor.

3 (End of Sidebar Discussion)

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1 MR. BARRY: No more questions.

2 MR. FRANK: No questions, Your Honor.

3 THE COURT: And with that, Trooper, you are excused.

4 THE WITNESS: Thank you, Your Honor.

5 (The witness stepped down.)

6 MR. BARRY: Next, Your Honor, the Commonwealth will
7 call to the stand Trooper William Scott.

8 THE WITNESS: Good morning, Your Honor -- good
9 afternoon.

10 THE COURT: Good afternoon.

11 If I could remind you to focus on the question and only
12 the question and answer only that question, please.

13 THE WITNESS: Yes, sir.

14 THE COURT: You may proceed.

15 MR. BARRY: Thank you, Your Honor.

16 (William Scott)

17 **DIRECT EXAMINATION BY MR. BARRY**

18 Q. First of all, sir, could you just tell the jury your
19 name?

20 A. Yes, my name is William Scott, S-C-O-T-T.

21 Q. What do you do for living?

22 A. I'm a Trooper with Massachusetts State Police.

23 Q. How long have you been with the Massachusetts State
24 Police?

25 A. Fifteen years.

1 Q. What is your current assignment with the Massachusetts
2 State Police?

3 A. I am currently assigned to the Berkshire County
4 District Attorney's Office, State Police Detective Unit.

5 Q. Getting to this case, at some point did you become
6 involved in an investigation against Adam Lee Hall for the
7 beating and robbing of David Glasser for his pickup truck?

8 A. Yes.

9 Q. And were you present for the interview that David
10 Glasser gave to State Police on July 23, 2009?

11 A. Yes.

12 Q. Were you actually in charge of that interview?

13 A. Yes.

14 Q. And was that interview videotaped?

15 A. Yes, it was.

16 Q. During that interview, did Mr. Glasser receive a phone
17 call?

18 A. Yes.

19 Q. And when he received that phone call, did -- at some
20 point, did Mr. Glasser place that phone call on speaker
21 phone?

22 A. Yes, he did.

23 Q. And did you hear the person that was calling
24 Mr. Glasser and what he said to Mr. Glasser?

25 A. I did.

1 Q. And now do you know someone by name of Adam Lee Hall?

2 A. I do.

3 Q. And in terms of Mr. Hall, have you heard Mr. Hall
4 speaking before?

5 A. Yes.

6 Q. Okay. I'm showing you Exhibit 38. Do you recognize
7 the person in that picture?

8 A. Yes, I do.

9 Q. And who is that?

10 A. That is Adam Lee Hall.

11 Q. Now, when you've heard Mr. Hall speak before, have you
12 heard him speak more than once?

13 A. Yes, I did.

14 Q. And on one of the occasions you heard him speak, did he
15 make mention of the phone call to David Glasser while he is
16 being interviewed?

17 A. Yes.

18 Q. Okay.

19 A. I wasn't in the interview, but I did hear him speaking.

20 Q. Oh, I'm sorry. What did he say about whether or not he
21 called David Glasser during the police interview?

22 A. He admitted he called Mr. Glasser while he was in the
23 presence of a police officer.

24 Q. And in addition to that admission, the interview or the
25 portion of the interview I will show you, do you recognize

1 the voice of the person calling Mr. Glasser?

2 A. Yes.

3 Q. And that is Mr. Hall?

4 A. Yes.

5 Q. And in terms of the interview, videotape, is that a
6 fair and accurate representation of a portion of the
7 interview you had of Mr. Glasser on July 23rd?

8 A. A short portion, but yes, it is.

9 MR. BARRY: At this point, Your Honor I, would like to
10 offer that video clip as the next exhibit.

11 THE COURT: Any objection?

12 MR. FRANK: No objection.

13 THE CLERK: Exhibit.

14 THE COURT: May be admitted.

15 THE CLERK: Exhibit 48.

16 (Exhibit No. 48, CD from police interview of
17 Mr. Glasser/Glasser-Hall conversation, marked)

18 MR. BARRY: I would ask if the -- dim the lights a
19 little bit, if that would be okay.

20 (Pause)

21 MR. BARRY: Thank you very much.

22 Q. (By Mr. Barry) First of all, before I play this video
23 clip, can you identify who this person is in the red hat?

24 A. That is me.

25 Q. And who is this individual?

1 A. David Glasser?

2 Q. Is there another person here?

3 A. Yes, I believe it's Trooper Jones.

4 Q. And in terms of your interview with Mr. Glasser, on
5 July 23, about how far into the interview are we when we
6 first start to see this clip?

7 A. I believe we are at least 30 minutes or so more into
8 the interview.

9 Q. All right. And at this point, did Mr. Glasser, while
10 you are interviewing him about what had happened with his
11 pickup truck and Mr. Hall, did he receive a phone call?

12 A. Yes, he did.

13 Q. All right. At this point I'm going to play that
14 portion.

15 (Whereupon, the video was viewed.)

16 MR. BARRY: All right. Can we have the lights again,
17 please.

18 Q. (By Mr. Barry) Sir, after the police finished that
19 interview with Mr. Glasser and hearing that phone call,
20 what, if anything, did police do in terms of Mr. Hall?

21 A. We went back -- we were actively seeking Mr. Hall to
22 arrest him.

23 Q. Were the police able to find him?

24 A. Yes, sir.

25 Q. And what happened after the police found him?

1 A. He was arrested.

2 Q. Okay. And what kind of vehicle was he in?

3 A. He was driving his registered GMC Hummer.

4 Q. And what, if anything, did the police do in terms of
5 that Hummer?

6 A. Towed it to the Pittsfield Police Department.

7 Q. Okay. After towing his vehicle and arresting Mr. Hall,
8 did the police apply for a search warrant, search warrant
9 for the Hummer?

10 A. Yes.

11 Q. And did it receive one?

12 A. Yes.

13 Q. And did the police then search the Hummer?

14 A. Yes.

15 Q. Were you present for such search?

16 A. I was.

17 Q. And while searching the Hummer, did police find one
18 particular item in the back seat of note?

19 A. Yes.

20 Q. And what would that be?

21 A. A wooden baseball bat.

22 Q. I'm going to show you an item and ask you if you
23 recognize this item?

24 If you need to look at the packaging?

25 A. Yes.

1 Q. And what is that?

2 A. That is the wooden baseball bat that was recovered from
3 Mr. Hall's Hummer.

4 MR. BARRY: I ask this be marked as an exhibit.

5 MR. FRANK: No objection.

6 THE COURT: Admitted.

7 THE CLERK: Exhibit 49.

8 (Exhibit No. 49, baseball bat, marked)

9 Q. (By Mr. Barry) In terms of where that baseball bat was
10 found, the police take a picture of the location of where
11 the baseball bat was found?

12 A. Yes.

13 MR. FRANK: If I may see that one moment?

14 (Pause)

15 Q. (By Mr. Barry) Showing you a photograph, ask if you
16 recognize that photograph?

17 A. Yes.

18 Q. And what is that?

19 A. That is a photograph depicting where the wooden
20 baseball bat was located in the Hummer.

21 MR. BARRY: I ask this be marked as the next exhibit.

22 THE COURT: Any objection?

23 MR. FRANK: No objection.

24 THE COURT: Admitted.

25 THE CLERK: Exhibit 50.

1 (Exhibit No. 50, photograph, marked)

2 Q. (By Mr. Barry) Trooper, I'm going to hand you back what
3 has been marked as Exhibit 50, and we will put an image on
4 the screen, and ask I you the image on the screen is the
5 same as located in front of you?

6 A. Yes.

7 Q. Is that where the baseball bat was found?

8 A. Yes.

9 Q. In addition -- was there any blood found on that
10 baseball bat?

11 A. No.

12 Q. In addition to the baseball bat, did police find any
13 other items of interest?

14 A. Yes.

15 Q. And would that be in the front passenger seat where
16 Mr. Hall had been located?

17 A. A cellular telephone was located.

18 Q. All right. I'm going to show you an object and ask you
19 if you recognize that object?

20 A. Yes.

21 Q. And what would that be?

22 A. This is the cellular telephone that was located on the
23 front seat of the passenger side of the vehicle.

24 MR. BARRY: Thank you. I ask that be marked as the
25 next exhibit.

1 THE COURT: Any objection?

2 MR. FRANK: If I could just check the bag for one
3 point?

4 THE COURT: You may.

5 MR. FRANK: No objection to either the phone or the
6 bag.

7 THE COURT: Admitted.

8 THE CLERK: Exhibit 51.

9 (Exhibit No. 51, cell phone, marked)

10 Q. (By Mr. Barry) Now, did the police get a chance to look
11 at the outgoing phone logs of that phone?

12 A. Yes. I did a passive search of incoming/outgoing phone
13 calls on that phone.

14 Q. Were there any phone calls in particular that caught
15 your attention?

16 A. Yes.

17 Q. What would that be?

18 A. At 7:29 p.m. a telephone call was made to a contact on
19 the phone as Dave Nig and it lasted 2 minutes and 15
20 seconds.

21 Q. And what time was it that Mr. Glasser got his call from
22 Mr. Hall on July 23rd?

23 A. 7:29 p.m.

24 Q. And in terms of the length of the conversation, about
25 how long was that conversation?

1 A. About 2 minutes and 15 seconds.

2 Q. And, sir --

3 MR. BARRY: With the Court's permission, I would just
4 have the witness read from what's been marked as Exhibit 43,
5 I believe without objection from defense counsel.

6 THE COURT: All right. Without objection you may do
7 so.

8 Let me see if I correctly recall, Exhibit 43 are the
9 medical records of Mr. Glasser; is that correct?

10 MR. BARRY: That's correct, Your Honor.

11 THE COURT: All right. You may have the witness read a
12 portion thereof without objection.

13 Q. (By Mr. Barry) Sir, I'm going to show you the medical
14 records of Mr. Glasser. I'm going to ask if you could just
15 read this line up to, I guess there.

16 A. Sure. It says:

17 Chief complaint: Description, PT -- which I know is
18 short for patient -- states he was (sic) prior to coming in,
19 with a bat, has pain in right lower leg and left lower
20 elbow. Patients denies LOC -- which I'm not sure what that
21 stands for -- or other pain.

22 Q. Thank you very much.

23 A. I believe --

24 Q. No. That's okay. I don't want you to speculate.

25 MR. BARRY: I don't have any further questions, Your

1 Honor.

2 THE COURT: Mr. Frank, when you're ready you may
3 cross-examination.

4 MR. FRANK: No questions, Your Honor.

5 THE COURT: Mr. Scott, you are excused. Thank you.

6 THE WITNESS: Thank you.

7 (The witness stepped down.)

8 MR. CAPELESS: May we approach sidebar, Your Honor?

9 THE COURT: You may.

10 (Beginning of Sidebar Discussion)

11 MR. CAPELESS: We're through our witnesses for the day.

12 THE COURT: All right.

13 MR. CAPELESS: And that's a good sign we moved quickly.

14 THE COURT: That's progress.

15 I will excuse the jury and we can take up whatever
16 other logistical matters after I've done that.

17 (End of Sidebar Discussion)

18 THE COURT: Ladies and gentlemen, we have exhausted the
19 available witnesses for today which means I'm going to let
20 you go a little bit earlier than anticipated.

21 I do, before you leave, want to remind you of my
22 earlier cautionary instructions. Over the weekend, please
23 don't discuss the case with anyone or expose yourselves to
24 any media reports of the case and don't conduct any
25 independent research of any kind regarding the case. I want

1 to thank you on behalf of the parties for your time and
2 attention today.

3 We will see you Monday morning.

4 As I said, counsel and I will meet at nine o'clock so
5 that we will be ready to proceed at 9:30 with you in the
6 courtroom.

7 Have a nice weekend.

8 (The jury exit at 3:29 p.m.)

9 THE COURT: Please be seated.

10 Mr. Capeless, can you give me an overview of what you
11 anticipate on Monday?

12 MR. CAPELESS: We just completed the presentation
13 regarding the first Glasser case. We would -- we anticipate
14 we are going to present the New York caper as it were with
15 witnesses from that, get into as well the prior attempts by
16 Hall with Coe and Rondeau. And also to bring in Brian
17 Johnston and the incident at the Home Depot with Veiovis and
18 Fox.

19 We anticipate that will probably get us to the end of
20 the day on Monday. And then move from there now getting
21 into that weekend.

22 THE COURT: From your vantage point, are there
23 evidentiary issues that will need to be addressed early
24 Monday before we get into that portion of your presentation?

25 MR. CAPELESS: I don't Your Honor.

1 THE COURT: Mr. Frank, from your side, are there
2 matters that you think we will need to address on Monday
3 morning?

4 MR. FRANK: I don't believe so, Your Honor. I think
5 those witnesses, as long as they on the New York caper, as
6 it was, I don't see a problem.

7 THE COURT: I am a mindful of the fact that the
8 Commonwealth's motion in limine is unresolved and we have
9 some time before we get to that point, but, I would be
10 prepared to hear argument on that on Monday if the two of
11 you are prepared.

12 MR. CAPELESS: You mean as to the statements at the
13 hearing?

14 THE COURT: Correct.

15 MR. FRANK: Judge, I'm hoping to -- I have two
16 assignments for myself over the Sunday. I am hoping to take
17 one day off and I may be ready. I would like to think it's
18 an easy type thing I can do it, but if I can't, I would like
19 to ask if we put it over until Tuesday.

20 THE COURT: I don't want to force you to argue
21 something that you're not prepared to argue. Why don't you
22 just bear in mind I have it on my agenda for Monday morning.
23 If we can't get it to it, we can't get to it.

24 With that, Counsel, I will see you Monday morning at
25 nine o'clock.

1 Have a nice weekend.

2 (The Court exited at break 3:31 p.m.)

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C E R T I F I C A T I O N

I, ALICIA CAYODE KYLES, REGISTERED PROFESSIONAL REPORTER, REGISTERED MERIT REPORTER, OFFICIAL COURT STENOGRAPHER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

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ALICIA CAYODE KYLES, RPR, RMR, OCR

Dated: December 15, 2014

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